UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-11845-shl

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In the Matter of:

BSG RESOURCES LIMITED (in administration) and WILLIAM CALLEWAERT and MALCOM COHEN, as JOINT ADMINISTRATORS,

Debtors.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

October 3, 2019

11:21 AM

B E F O R E :

HON SEAN LANE

U.S. BANKRUPTCY JUDGE

ECRO: F. FERGUSON

HEARING re Status Conference

HEARING re Doc. #45 Letter Filed On Behalf Of William Callewaert And Malcom Cohen, As Joint Administrators

HEARING re Doc. #46 Letter In Response Filed On Behalf Of Vale S.A.

HEARING Re Doc. #47 Letter Seeking Court's Approval Of A Protocol To Guide Disclosure Of Personal Information Under The General Data Protection Regulation In Discovery Filed On Behalf Of Vale S.A.

HEARING re Doc. #48 Letter In Response To The Letter Seeking Court's Approval Of A Protocol To Guide Disclosure Of Personal Information Under The General Data Protection Regulation In Discovery, Filed On Behalf Of William Callewaert and Malcom Cohen, as Joint Administrators

HEARING re Doc. #50 Letter In Response To Joint Administrators Letter Filed On Behalf Of Vale S.A.

HEARING re Doc. #50 Letter In Response To Joint Administrators Letter Filed On Behalf Of Vale S.A.

HEARING re Doc. #53 Letter In Response Filed On Behalf Of William Callewaert And Malcom Cohen, As Joint Administrators

HEARING re Doc. #54 Letter In Response Filed On Behalf Of William Callewaert and Malcom Cohen, as Joint Administrators

Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

P R O C E E D I N G S

THE COURT: We're here for BSG Resources Limited, a Chapter 15 case. Let me get appearances from counsel.

MR. HYMAN: Good morning, Your Honor. Fred Hyman from Duane Morris on behalf of the joint administrators. I have with me my colleague, Jarret Hitchings. I also have in the courtroom, Your Honor, Stephen Peters, who joined us last time, who is a forensic accounting partner at the firm of BDO.

MR. ROSENTHAL: Good morning, Your Honor. Jeffrey Rosenthal of Cleary Gottlieb on behalf of Vale. I'm with my partner, Lisa Schweitzer and my associates, Emily Balter and Sam Levander.

THE COURT: All right. Good morning to you all. So let me just set the stage. So we're here in connection with a variety of filings. A letter -- this is not exclusive. On the one hand, we had the motion; that is, the motion was filed regarding discovery, seeking a protective order, responses to that, a hearing that took place July 30th. There has been numerous proceedings dealing with discovery since. We got together August 29th for a conference, and there's a transcript of that.

There are letters on August 27th, September 9th, September 12th, September 13th, September 16th, September

17th, September 18th, September 25th that fill out the ongoing discussions back and forth. And just for brevity in the record, I'm not going to identify each -- each -- who sent each letter and the extent of the letters. I think they're all in the docket. So at a certain point, I think they are the docket. So I think one's 45, one's 46, one's 47, one's 48, 50, 54, 58.

And then we had an amended notice of hearing that is on Docket 60 that set today as a hearing on document production and GDPR issues. We really are on everything that's been filed back and forth, and that actual item ended notice of hearing actually identifies the various things that had been filed, I think gets all of them, but so many filings, it's hard tell who was.

So I have read everything, and we have a variety of matters to talk about. So the one thing I will not do here -- I will not do today is I will not leave here without an order, because the lack of an order has just led to further mischief and lack of progress, and I'm not trusting anybody. I will draft the order myself if necessary and without input from anybody, but I'm tired of this.

It just -- I've never seen a case with these kind of discovery problems in my nine years plus on the bench. And in a Chapter 15 case, where COMI is clearly an issue and what people are doing and where they're doing it is so

clearly an issue, I have just -- it boggles the mind.

So with that said, since we have a requesting party and essentially an ongoing opposing party to discovery, I think it makes sense from hear from Vale, who is a creditor of BSGR, as they call it. I think I've been calling it BSG, but they're really the same thing and just occasionally, the different terms pop up in the papers.

So the first question is whether to do this seriatim issue-by-issue. I suspect that that's the way to go, because if we go through everything, who will remember what we talked about at the beginning by the time we get to the end.

MR. ROSENTHAL: I think that makes sense, Your Honor. I had thought that just setting the stage for ourselves, I would just lay out the issues that we expected to cover today. We thought we would just start with an update on the production for Your Honor.

THE COURT: All right, that will be helpful. I know that's one of the issues.

MR. ROSENTHAL: And then we have three issues in dispute regarding sources of production: one has been Beny Steinmetz; two is from officers and directors and Onyx, their back office; and three is the current directors, including Mr. Cramer. And then last, we have the GDPR issues, which my colleague, Ms. Balter is going to address.

THE COURT: All right. I think that's pretty much how I had outlined it in my own preparation for today.

MR. ROSENTHAL: So with regard to the production update, Your Honor. One of the letters that you had cited was the August 27th letter by the joint administrators' counsel to the Court. It set the stage for the Court conference several days later, in which the joint administrators laid out kind of a tri-part type of schedule, right.

So they had 320 documents that they were going to be producing the following week. They had 37,730 documents that would be reviewed, produced on a rolling basis with a target competition of September 27th, and the remainder would be reviewed with -- produced on a rolling basis with a target completion of October 26th.

We did get the 320 documents a couple of weeks later than we were told we would get it, but we did get it. There were actually 211 unique documents; the rest were duplicates.

With regard to the 37,730 that would be produced on a rolling basis with a competition of September 27th, today is October 3rd, we haven't seen one document. Needless to say, therefore, the documents that the rolling completion would be done by October 26th, we have not seen a document either. We have agreed -- and this kind of helped

them release the first batch of 320 -- we said that until the Court addresses the GDPR protocol, we'll accept provisionally their protocol so that that's not an excuse to delay any productions. They then released the 320. We've heard no explanation at all, and in the letters to the Court, there's been no explanation for the lack of those.

And unless the Court wants to address that before the three issues in dispute.

THE COURT: Let's deal with the three issues in dispute, and then we'll loop back to the schedule.

MR. ROSENTHAL: So with regard to the three issues, Your Honor, the first one is Beny Steinmetz, you know, the number one, the big boss, the beneficial owner of BSGR. And the Court made a lot of statements that was really spot on to the law back at the last conference, in which Your Honor said, for example, at Page 44, if somebody is conducting business and enterprise through personal email, you can just read the headlines in the "New York Times" to figure out it's not protected as personal email. And I will -- and nobody's going to cite anything to me for that.

If he's conducted business and he's conducted business and wrote emails, and it sounds like there are emails, then there are emails and is conducting business, then he needs to turn over what needs to be turned over.

And if he's a principal, he's part of the Debtor.

So the Court posed several questions. We provided you with some law to back up what Your Honor was saying to begin with. But Your Honor was really focused on the factual issues, because the law is so well settled here in the Southern District. And the factual issues are: number one, is he the beneficial owner, because if he is, that's the end of the story; and number two, if he's not the beneficial owner, was he out there negotiating the settlement with Guinea? Because then if he did that, that's an issue relating to COMI and acting as an agent for the company. It's also subject to discovery here.

So we addressed those factual issues. And, frankly, Your Honor, there's no dispute. We set forth the evidence that we have, that Beny Steinmetz is the beneficial owner, through Nysco the parent, and then that's owned by the Balda Foundation, which is his family's trust to say that he's the beneficial owner. There's been no engagement or dispute on that issue in the papers.

And with regard to negotiation, we got back the same response that Your Honor's been hearing. Well, actually, the story has changed. We told Your Honor, since June, that Mr. Steinmetz was the principal negotiator the settlement with Guinea; that was denied repeatedly. In the latest letter, the joint administrators have acknowledged

now that Mr. Steinmetz did negotiate it, but stand on the idea that they still have final approval authority.

THE COURT: Well, I was dismayed to see the issue sort of resurface at the end of the letters back and forth. The letters initially seemed to move on to some details about things that we hadn't completely nailed down. You could argue that they had been discussed in sort of general principals, but the devil's always in -- often in the details.

But I was dismayed to see his questions about what's appropriate for him or not still being raised, given the facts that I have. So perhaps, I mean, if there's anything else that you briefly wanted to add, but I'd like to hear from the foreign representative on that.

MR. ROSENTHAL: Well, I mean, I would just say that the law is quite clear on this, Your Honor. And I think all the Court needs to do is read the Royal Park decision, in which there's five different reasons given by the Court there that all apply here as to why discovery of Mr. Steinmetz is appropriate.

And critically, what the joint administrators have done is they have looked at quote, literal control -- do they literally have the ability to force him to do this -- as opposed to the test that is in the Southern District and the Second Circuit, which is practical ability. And the

Court goes through what practical ability is, and it's clear they have it here. Here is -- there's a financial interest; that alone is practical ability. He was their agent; that alone is practical ability.

The other thing, Your Honor, that isn't set forth in the letters, but I think is very relevant to this, is the Royal Park court talks about the fact that the subjects of the requested discovery had participated in prior discovery when it suited the party that was resisting it, and we have that here.

Mr. Steinmetz and virtually everybody we're seeking discovery from here produced documents in connection with the arbitration, submitted witness testimony in the LCIA arbitration in favor of BSGR, submitted witness testimony, and came to Paris and testified on behalf of BSGR in the ICSID arbitration.

And, you know, we even have and we can hand up to the Court two items: one is an email from Mr. Steinmetz confirming that he checked his files in connection with the LCIA arbitration and the documents requests; and we have a list of all of the custodians that were checked in the LCIA that BSGR's counsel, now the joint administrators' counsel, prepared for us and gave us. Dag Cramer, we checked his phone, we checked his tablet, we checked his home drive. Beny Steinmetz, we checked his BlackBerry, we checked his

backup data.

So, you know, the notion that they now don't have a practical ability to obtain this is preposterous, and they certainly have not met their burden of proof of avoid a court order here. And that's all I have to say on Mr. Steinmetz for now. I'm happy to hand up these two documents that I just referred to.

THE COURT: Good. Just make sure they're shared with the other side. Thank you. All right. Let me hear from the foreign administrators.

MR. HYMAN: Good afternoon, Your Honor. If you wouldn't mind, we'd like an opportunity to address issues relating to the current status of production and what we anticipate going forward. We're hopeful that Mr. Peters could present to Your Honor, since he is on the ground and is overseeing --

THE COURT: I want to deal with Mr. Steinmetz first.

MR. HYMAN: Sure, Your Honor. Your Honor, the context of discovery shouldn't relate to COMI. We understand the order from this Court requiring the joint administrators and BSGR to seek documents back from the date of 2014. Certainly, COMI itself is judged as either the date of the joint administration or the date that the Chapter 15 was filed. The documents that we were just

handed all predate the issues relating to either one of those dates.

THE COURT: Well, they're submitting them to show his involvement in BSG. So -- and I've yet to hear any dispute of the core facts about him being the guy, for lack of a more legal term. And the foreign representatives were appointed and that's nice, but they don't control him, pretty clearly if the allegations in the factual proffers that have been given to me, are evidence in terms of what he's doing or not doing on behalf of BSG, which is, after all, named for him.

And so, without any dispute about any of those facts, why are we still talking about this having talked about this at numerous prior hearings?

MR. HYMAN: There is no dispute as to what is in press reports. The joint administrators themselves do not know if Beny Steinmetz and his family ultimately own and control Balda, but we have no reason -- they have no reason to believe that he doesn't.

THE COURT: That actually doesn't even necessarily matter if he's out doing things for BSG holding himself out and negotiating deals, which is all relevant to COMI in terms of him being a central figure in the ongoing business. So he could actually have sold every bit of his beneficial interest. If he is -- if he is holding himself out and

negotiating deals on behalf of BSG, that's just another way to get to the same place. So what is it that you are not willing to do in connection with producing things relating to Mr. Steinmetz?

MR. HYMAN: The joint administrators do not have control over Mr. Steinmetz in order to require him to produce documents to this Court; they simply don't.

THE COURT: So when this came up last -- the problem with this, with the discussions we've been having about this is, it's -- we address one thing and then something else -- it's a variation on a theme -- comes up. So am I understanding that you now concede, after having talked about it numerous times, that Mr. Steinmetz is fair game for purposes of subject matter of what he was doing or not doing for purposes of the COMI in this Chapter 15?

MR. HYMAN: I think that what we've provided, Your Honor, in connection with our most recent letter was a Declaration of William Callewaert, who happens to be on the phone today listening in. He's one of the joint administrators located in Guernsey.

THE COURT: Can I get an answer to my question?

MR. HYMAN: Yes. What we are focused on, Your Honor, is what has happened following the administration when the joint administrators were appointed, at which time, nobody other than the joint administrators had any authority

to bind BSGR, nor to act as agent for BSGR.

THE COURT: Okay. I have heard this argument numerous times, and I think I have overruled this argument numerous times, saying that the foreign administrators can say what they want to say in terms of administration in Guernsey and in terms of getting Court approval in Guernsey to act. That clearly may or may not have any effect on what Mr. Steinmetz apparently is doing in terms of negotiating settlement agreements.

We talked about this in detail last time. And you said, but those settlement agreements can't get ultimately approved without Court approval in Guernsey and that's the foreign administrators job. That's fine. That doesn't change the fact that he's involved up to his eyeballs in the business of BSG.

So unless you have something else, I'm not looking for a concession anymore. I will just tell you, I am making a ruling and it will be memorialized in an order that Mr. Steinmetz, anything he has done is fair game for purposes of determining COMI. And COMI tells the relevant times periods. There's plenty of cases on that. We'll get to that.

But we still keep talking about the foreign representatives versus Mr. Steinmetz, and he can sort of do his thing, but they have the ultimate authority. It doesn't

matter for purposes of COMI. It is not a basis to restrict discovery.

MR. HYMAN: But it does, Your Honor, if it's COMI of BSGR at the time that the joint administration was -- it was connected.

THE COURT: The time period for COMI is a different issue, right, and I have zero briefing on that, despite the voluminous things that I have here. And this, again, goes to the whack-a-mole nature of what we've had with discovery. We get through one issue and then views shift, and then we go to another issue and then views shift, and then we end up talking about other issues.

So now we're talking about COMI and timeframe. I've dealt with that plenty. I'm not alone in this courthouse. You can look, there's plenty of opinions to talk about the relevant time for considering COMI. What I'm saying is that I am overruling your objection to Mr. Steinmetz saying he's not -- discovery relating to him and his actions is not relevant. COMI and the cases in this jurisdiction tell us what time period is relevant. It is what it is what it is.

What I'm saying is that I am overruling your objection as to Mr. Steinmetz and his involvement and, therefore, the appropriateness of discovery as to what he has been doing on behalf of BSG.

MR. HYMAN: And to be clear, because maybe I wasn't. I don't think, and I know that we aren't contesting -- or the joint administrators are not contesting that whether Beny Steinmetz was out purporting to represent BSGR and other entities is not relevant for Your Honor's consideration in terms of COMI.

THE COURT: Well, it doesn't matter at this point. I asked you whether you conceded that. I couldn't get an answer. I've now made a ruling. So the ruling that will be memor- -- and we're going to keep track of these -- that will be memorialized in the order is that discovery relating to Mr. Steinmetz's activities on behalf of the Debtors are relevant, period full stop, for COMI.

All right. So what else do we need to talk about in connection with Mr. Steinmetz?

MR. HYMAN: Can I just clarify that for one moment?

THE COURT: No, because it's a ruling, and it's not your ruling, so you don't need to clarify it. What else do you have?

MR. HYMAN: Is the -- can I ask if the ruling requires the joint administrators to produce documents that Beny Steinmetz personally has?

THE COURT: It -- okay, so now we're moving onto the issue of control --

MR. HYMAN: Yes.

THE COURT: -- which is a separate issue and separately briefed. So the rules about control -- and that's what's frustrating about this ongoing discovery dispute that we've been talking about for months -- is I'm only applying well-established rules, right? So the rules about COMI and timing; well established. The rules about what's fair game when somebody's acting on behalf of a corporation and/or the beneficial owner; well established.

The rules about control are equally well established. And I have one of your articles sitting on my library that talk about them, and they're 25 years old and the law hasn't really changed all that much. So if they have an ability to obtain those documents through the exercise of their positions -- and so, you know, I'm going to flummox the actual standard, but it's all the papers.

So if they have the ability as a legal matter and possession, custody or control. And what's normally ignored by folks is control. You may not have it, but you have the ability to get it and ask for it; that is control. And so, I can deal with that in more detail if people need, but, again, I'm not reinventing the wheel. I'm not issuing any sort of decisions on an issue that is unclear out there in the law. It's -- this horse has been beaten to death in so many opinions, I can scarcely count them.

So I'm not going to rely on what I've been hearing thus far, which is a more myopic view of what the foreign representatives have. So if they have it sitting in their office, that is not pro-extensive with possession, custody or control for purposes of producing documents in this Chapter 15.

The other problem I have with all of this is that you need to reach your burden of proof for purposes of getting recognition. So the other way this goes is if you don't produce things, and there's plenty of stuff that they can raise and say we have every reason to believe X, Y and Z, they haven't met their burden. You say, well, we don't have this stuff, we don't really know; you're not going to satisfy the burden for recognition.

I've never seen a case that was filed where there was such a desire to not move forward with recognition. So that's the other problem you're ultimately going to face, is your ability to satisfy your burden for proving recognition, which is, again, well established and applicable. There's tons of decisions, so I won't beat that horse to death.

So is there anything specifically on possession, custody or control that we need to address here today?

MR. HYMAN: All right. If your ruling is as it stood, Your Honor, I don't believe that there is, but I think that we will take Your Honor's ruling to heart. There

has never, notwithstanding the appearances and the delay in discovery, there has never been intend on anybody's part to delay discovery. We absolutely know what the burden is. I think you will hear --

THE COURT: Well, that -- I never know what's going on behind the scenes. I only see what positions people take in course and the progress of the case. I -- that's a hazard of the job. But all I can say is, this case has not moved forward in the way that other Chapter 15s do; it's in the statute, the need for speed in Chapter 15. And most parties come, consistent with that, and say we have issues about COMI; and, therefore, what do you need, we're going to get it done, we're going to come in.

And so, there's just been a series of positions taken by the administrators that basically really don't seem to have a whole lot of merit to slow discovery down and it really just involved me applying in detail very well-established principles of law. And then we leave, I think we have an understanding, and then people come back and say, well, nothing was produced or well, Mr. Steinmetz, we thought we solved it, but we didn't solve it.

And so, that's why this order is going to be blow-by-blow-by-blow, because I think it's not -- it's just not the way the system is supposed to work. So the order should contain a ruling that -- that the Petitioners are required

to produce documents under the possession, custody and control. Please find the most pedestrian well-traveled version of this standard that I'm applying here, but that you can quote it for an applicable; if not, I'll find one. And, again, I'm just applying the applicable law.

MR. HYMAN: We appreciate that, Your Honor.

THE COURT: All right. Now, before we go on to the next issue, I know you did want to talk about the status of documents and scheduling and where things are, and I know he had addressed it, so I didn't want to leave something on Mr. Steinmetz.

MR. ROSENTHAL: Just on Mr. Steinmetz, Your Honor, just because, again, I'm just kind of trying to head off the next roadblock, which is, you know, for them to come back and say, well, we actually don't have the practical ability. And there is -- there's four factors that the Royal Park court cited, and they're all applicable here. They all exist here.

And the Royal Park court basically then said, okay, I'm entering a finding that you have a practical ability; go do it. Because I don't want them to come back and say -- and the Royal Park court, in fact, said this isn't a serial opportunity to kind of keep raising a new roadblock each time.

And the four factors are: number one, financial

interest. I think the Court can find that he has a financial interest based on the record; this is not contested. Number two, did things acting as agent on behalf of the company. We've put in the record; it hasn't been contested. Number three, the fact that this person has participated in discovery voluntarily on behalf of the corporation in the past; we've put in that record.

And number four -- and actually, this is what really disturbed the court in Royal Park -- is they never even asked prior to coming to court and saying that we don't have control. And we said, the least that you can do is, before coming to court, is to show us evidence that you've asked them to cooperate and they refused.

And I think we have all four of those factors here; that just to avoid kind of a serial re-litigation of this, I think it's appropriate for the Court to say, look, this test is met under these circumstances.

MR. HYMAN: Your Honor, Royal Park was determined in the context of five directors that were currently directors. There were the economic interests; was the economic interest or ability of the defendant to hire or fire those directors.

This is, while there may be or not be an economic interest on the part of Beny Steinmetz, it doesn't come close to meeting the standards in Royal Park. And to say so

is disingenuous.

THE COURT: Well, let me ask you, does he have a financial interest? I have seen a lot of information provided to me at various hearings addressing that issue and going through, in detail, him being the beneficial owner through various different entities; and, therefore, having a financial interest would -- which would explain his extensive level of involvement. And, indeed, nobody on your side has ever identified anybody else who's acting on behalf of BSGR.

MR. HYMAN: The joint administrators are.

THE COURT: No, no. Before the joint administrators leading up to the joint administration, you haven't identified anybody at the company who seems to be doing anything, other than the joint administrators. My understanding of joint administrators is that they are not necessarily the only people acting and so, you've never named somebody else.

And so, but I backtrack. So I do have information that has been provided on all the four factors that are just identified, do you have any information factually about the financial interest question; do you have anything to say factually on that? Do you dispute he has a financial interest?

MR. HYMAN: Ultimately, we read the press reports.

He may have an ultimate financial interest in his subsidiary. However, when you look at Royal Park, the financial interest went to control, and for the ability of the party that was requesting those documents to exercise some leverage over the party that had to comply. Here, that isn't the case.

THE COURT: Are you saying, so he's involved in negotiating the original deal with Guinea. He's involved in negotiating the purported settlement, which I know you say the foreign representatives need to approve -- I don't disagree with that for purposes of the proceeding in Guernsey -- but you say somehow, he doesn't have any degree of control?

Again, you're -- so what I'm hearing is that you're telling me right now that when you say he may have a financial, that you don't dispute what's been provided to me that he has a beneficial financial interest in the Debtor.

MR. HYMAN: We do not dispute that he may be the ultimate beneficiary.

THE COURT: No, may be doesn't help me. May be is -- may be is conditional. It means nothing. A lot of things may be. The Mets may be better next year, but I know better than to actually hook my wagon to that.

MR. HYMAN: So do I, Your Honor.

THE COURT: So I can't work with that. So I

haven't been presented with anything that disputes the factual picture that's been presented to me about his beneficial financial interests.

MR. HYMAN: We do not know that there is anybody else that owns the equity interests or beneficial interests of Balda.

THE COURT: And as to the second one, I'm not hearing anything that disputes that he's acted as an agent of BSG.

MR. HYMAN: He certainly is not authorized to act as an agent, and he's not authorized to act as an agent today.

THE COURT: Okay. But, again, we keep having these discussions, and then you bring me back to a particular characterization of an issue that's where you want to fight this battle, which is after the Chapter 15 was filed.

My understanding is that you don't dispute that he negotiated the ultimate deal with Guinea, that is really kind of the Debtors' business, or that he is involved in trying to reach a settlement of the dispute with Guinea. Again, a settlement you say he cannot -- that cannot be finalized without the approval of the foreign representatives, but that he was doing the negotiating.

MR. HYMAN: And may never be finalized.

THE COURT: No, no. I'm asking factual questions, so I'm not asking for you to give me your gloss on what they all mean. I'm asking very specific factual questions.

MR. HYMAN: Nobody denies that Mr. Steinmetz was off negotiating a deal that he was not authorized to negotiate. That settlement ultimately needs to be approved -- I know that Your Honor is aware of that -- and reviewed and revised. It may be ultimately agreed to in its current form; it may never be agreed to. It may be agreed to in an alternative form.

THE COURT: But he's holding himself out as BSG in the context of those settlement discussions.

MR. HYMAN: But not with any authorization from the joint administrators or BSG.

THE COURT: That's fine. I understand that position. But it doesn't change the facts that he's holding himself out, and clearly has apparent authority to anybody who's talking to him, including the -- an independent sovereign country.

So let me move on to number three. I realize you were just presented with information dealing with his involvement in discovery and complying with discovery in other proceedings, including the tribunal -- and I don't want to misstate. Could you remind me what the exact title of the proceeding is?

MR. ROSENTHAL: Sure. So he provided documents or searched for documents in connection with the LCIA arbitration. He also provided live testimony in the ICSID arbitration, and he provided multiple witness statements as a witness in both the LCIA and the ICSID arbitration. I think these are facts. I can't imagine they don't know because it's been so part of the history of this company for the last few years.

THE COURT: All right. Do you dispute any of that?

MR. HYMAN: Only to point out that the dates are prior to the joint administration, at which time nobody other than the joint administrators have any ability to rule or act on behalf of the company.

THE COURT: I understand that. All right. But it's pretty clear he participated in the past in discovery on behalf of the company in other proceedings. And so last, but not least, the fourth factor: have the administrators ever asked him to cooperate and provide documents that are requested?

MR. HYMAN: To my knowledge, the joint administrators are not in contact with Beny, not in contact by email or by phone. There have been less than a handful of meetings at which they have met Mr. Steinmetz, but that is the full extent of the contact.

THE COURT: All right. So what I'm hearing is that they have not asked him to cooperate and so -- in terms of discovery sought. And so, I think all the -- I'll make a finding that all four of the factors in Royal Park are satisfied here, and we'll see where that gets us or doesn't get us in the future.

All right. You wanted to talk about the status of documents that are being produced and the schedule?

MR. HYMAN: Yup. If you wouldn't mind, Your Honor, if Mr. Peters could address the Court in terms of current production.

MR. PETERS: Your Honor, thank you again for giving me an opportunity to address the Court. I just thought it would be helpful really, just to understand where we've got to in terms of the document production since the hearing on the 29th of August.

As you'll recall, there's a lot of discussion about the 321 documents at that hearing. And subsequent to that hearing, those documents were available for production. There is, as Cleary mentioned, you know, there was a lot of toing and froing about the protocol, which meant that the production of those documents was delayed.

However, we had a call with Cleary on the 12th of September to try and resolve the issues over protocol. And when it was clear that that wasn't going to go anywhere, and

it's part of the reason why we're here today, we actually did agree to release the documents in conjunction with authorization of the protocol, and those documents were released the following day.

Now, subsequent to that, we've been working on getting more documents to disclose. We've now got a second tranche of documents, comprising 425, that are ready to go, and they've been based on a targeted search on issues that we know would respond directly to the 68 requests that have been put to us. They deal with Asher Avidan, Capital Markets, BSG Real Estate, and the (indiscernible) investigations that we've undertaken.

There's also a third tranche of documents, and that's a third of 516 documents that are going to be ready to go in the next day or so, and they relate to the Standard Charter Security. And there are a number of invoices that clearly demonstrate that COMI is guaranteed and, again, are responsive.

Now, I suppose you ask, what about the rest? Well, we've uploaded 1.2 million documents to relativity; that's significantly more than the 38,000 that were referred to earlier.

Now, we're going through each of the 68 requests, line by line individually, and coming up with key words that will respond to the requests to identify responsive

documents. Now, that's an interesting process. When we first do that, we get thousands and thousands of hits, tens of thousands of hits for each request, which clearly, it's just not realistic. And when we look behind that, there are a significant portion that aren't responsive documents. So, therefore, we need to look at ways to reduce that down to documents that are purely responsive. So it's a step-by-step process.

As things stand, we've identified documents that are responsive for 35 of the 68 requests, and that's 28,000 documents. So that's -- you know, some of those documents can be hundreds of pages long. We've now got a team of 15 specialist document reviewers going through the GDPR and relevance and sorting and sifting on that basis. These are then going to Duane Morris for them to check for legal privilege, before coming back to us for final QC, at which point, they can be prepped and made available.

Now, we expect to start that flow of documents in the next week. And once it's started -- that's not the full 38,000 documents -- it will be a conveyor belt. So we've been releasing documents for Cleary on a daily basis.

Now, in parallel to that, we're also looking at the remaining 30 odd document requests. And by the time that the 28,000 have been sifted, we will have uploaded further documents that are responsive at the back end of

that, so the conveyer belt will continue.

And we expect to have all of those documents disclosed, the relevant documents that have been reviewed for GDPR that have been reviewed for relevant and have been reviewed for legal privilege to be made available to Cleary within 20 days of now.

Now, I'd just like to briefly touch on costs, because, you know, it is relevant from our perspective. In terms of the work that we're currently doing, we expect our own costs, excluding our attorneys, to be somewhere in the region of $850,000 for this process. Now I know that Cleary has asked that redactions are done in a particular way, and we've done a few tests on that to see the effect of doing that.

And if we go down the route that they want, whereby they're asking us to redact and then put on an individual redaction-by-redaction basis of description, we're looking at costs in excess of $2 million, and that's obviously hugely significant. And, you know, the reality is that it's not going to give them any additional information that's relevant to COMI.

THE COURT: Well, I think we had had a discussion about an attorneys-eyes-only process and order that would give you an order that is important for purposes of any GDPR issues and the privacy issues under the European regime, but

at the same time, allows a process that may be less extensive and less costly.

And I think -- I think I had hoped, and I think I said on the 29th, the parties should work on a joint proposed order that would minimize regarding this process by providing for attorneys-eyes-only, and hoped you would get something to me in 10 days. And at the time we were discussing it, I thought -- I had the sense that people thought that would be useful. But, you know, that was more than a month ago, and I never did get anything.

So my understanding is that a court order that says what's necessary for purposes of the case takes things out of the category 2 that we've been using as a framework and would move into category 1, meaning that they've been determined to be relevant for purposes of the case. And essentially what it does is say that in order to deal with the case efficiently, we've come up with a procedure to safeguard privacy information, not make it generally available and not widely disseminated.

And I know it's -- it probably is an American concept to do attorneys-eyes/professional-eyes only, but that it might be one, at least -- again, I didn't hear at the time of the August 29th hearing anybody say that that idea was dead in the water. But that was something I don't think I've heard anything further about.

MR. ROSENTHAL: Your Honor, we were hopeful that ultimately when we get an agreed-upon protocol, that that would have the same effect. We thought we were very close. We think we still are very close, with the exception of two different issues. We don't think that there's an order of this Court that just freely allows discovery of all GDPR without some -- of all GDPR material without some redactions.

THE COURT: No. I don't think anybody is suggesting that an order resolves all GDPR issues. But I think the idea was that, to the extent there was discussion of different levels of redaction, that that might provide a way to address that without having to redact, re-redact, change redaction procedures, and provide more information so as to resolve their objection without waiving your rights as to how something was ultimately used or whether it was ultimately made public.

And certainly, I don't think anybody -- and certainly, I didn't and I don't think anybody took the comments to mean that we're going to waive away GDPR issues by virtue of that kind of an order. But rather than when you began to get into very specific redaction procedures that are very costly, that that's where that could be useful and that the order would contain a number of very specific findings about the case: involves the following parties;

COMI is an issue; COMI looks at the following things in order to.

COMI, discovery in a case involving COMI would include the following categories of information: the parties have -- you know, there is some information that is being clearly protected by GDPR that is being redacted or not produced; and that this information, I think even in your own papers, that said that it's less clear what's protected and what's not protected.

And, frankly, if you're in those circumstances, you really have no choice but to take the more cautious route. But that, given that circumstance, the Court finds that a showing has been made, for purposes of discovery, that it is necessary to produce that information, but in order to minimize any privacy issues, that this is the procedure.

So that's what I had envisioned doing. Again, I'm not trying to -- and I don't think anybody is, we've spent a lot of time briefing GDPR issues, so I'm not trying to waive away GDPR issues. I understand they're significant. I appreciate counsel being here from across the pond to discuss these issues, and so, I'm not -- I'm not trying to waive them away.

But we often deal with, as you know, in Bankruptcy Court, instances where there's litigation pending in many

forums. And so, I think what we try to be is helpful to the extent that there are ways to -- that a Bankruptcy Court can assist parties to not have to -- take some items off their to-do list and some things that you can resolve by virtue of findings in an order.

MR. ROSENTHAL: Your Honor, and we're going to get to the protocol issues and this is one of the protocol issues. What you'll find -- we think the issues with respect to the protocol are relatively minor and easily resolved. There are only two categories, that there is a question as to whether it should be generally redacted or generally unredacted; that is personal email addresses and nationalities.

And it may be helpful in the event that Your Honor rules one way or the other in respect to one of those two things to include a ruling on that point. But as it relates to all of the other categories, there's no dispute between the parties.

THE COURT: All right. Because, again, I am sensitive to costs. We're supposed to be in Bankruptcy Court, right? People are filing for insolvency because they have financial issues, whether it's an individual or a company, series of companies. So certainly, I understand that, and, in fact, the American discovery rules consider that in terms of proportionality. And recently, that

concept sort of got a refresh in the rules, even though it was always in the rules, just to remind folks that use of -- in a traditional domestic case, but I don't see why that would be any different here. So certainly, that's part and parcel of a protocol that's a court order.

But even if there are some issues that are unresolved and parties essentially say, Judge, we just want to reserve our rights, an order making certain findings about how discovery should -- needs to proceed in a case may allow parties to ultimately reserve their rights, not spend unnecessary time on redaction procedures, which are enormously expensive, and give you some comfort that you're not going to be sued tomorrow on the basis of GDPR.

So that's why I was trying to sort of pitch it. I know you're trying to, you know, trying to ultimately resolve all issues of protocol and GDPR. But my sense is what an order can do is finding this necessary for purposes of the case than, you know, but I'm still not trying to trample on anyone's rights, that attorneys-eyes-only is a way to do that. So that's certainly the hope.

And I still think that would be true -- I know there's a couple of categories that remain outstanding, but there may be a way to produce those documents under the more fulsome version, less redacted, and still preserve your rights for purposes of GDPR in a finding that's saying for

purposes of discovery in this case, it's necessary to proceed this way, consistent with Chapter 15s concerns about expediting proceedings and costs, all sorts of things.

And, again, there are GDPR experts in the room. I am not one of them. So you would tell me what that kind of order, what it needs to look like and what's appropriate. But certainly, I can think of some findings that we've already gone through that would get us a lot of the way there.

MR. PETERS: Thank you, Your Honor. That's really helpful. I just -- and I know that Mr. Hyman says that we're going to come on to a protocol. But the issues around the protocol, you know, they're not about the categorization. The difficulty we have isn't about the categorization, per se; it's more about what Vale and Cleary are asking us to do in terms of the redaction. And for every single redaction, and we are talking hundreds of thousands of redactions, they are asking us to put an individual text box against each one to say what that redaction is.

THE COURT: All right. No, I understand and we're going to get there shortly. My thought is there are some things, like personal emails is one of the categories, that if I find for purposes of the case that they should be produced attorneys-eyes-only, then they are -- and not

provided generally to the clients, to the public without further order of the court -- that that's a level of protection and a level of finding that still allows you to preserve the issue, ultimately, while also not having you even redact them in the first instance. And so, if you don't redact them, even under their view of the world, no redaction means no text box.

So even before I made a ruling on that, it would sort of take that issue off the table. And also, frankly, even if you don't put it in an individual text box, you'd have to address it in sort of a general explanation of things, and it would take that part of the process off -- off the list of things to do.

MR. PETERS: We have taken that into account in our assessments of the additional time involved and then have a search on that basis. But we know, obviously, you know, you're fully aware of the issues and we'll deal with it.

That's all I have to say on where we are in terms of discovery. I would have liked the change -- but obviously, you've made no (indiscernible) -- rebut the misrepresentations based on inaccurate press reports around Mr. Steinmetz's role. But, unfortunately, you've made --

THE COURT: Well, again, I read everything that was provided to me, and I take that very seriously. So,

again, in discovery, it's not a trial, so I'm not making a finding, but I'm making -- of any particular level of involvement or particular acts. What I'm finding is that there's been a basis given to me that says that Mr. Steinmetz is fair game for discovery.

That's the way the American system works, which, frankly, is different than the way a lot of other systems work. And for some systems, discovery is a lot more curtailed, and I recognize that. But for the American system, essentially, you have a good-faith basis to say we have a -- we want to know about this, this may be very relevant.

And I found that that's satisfied. So that's -- and the only specific findings I think I'm making to Mr. Steinmetz are the ones dealing with that Royal Park case, which are very specific and really aren't necessarily -- they're not COMI related; they're sort of a control issue in terms of what's appropriate for discovery.

MR. PETERS: Sure, Your Honor. I'd just like to make a point regarding the repeated statements about the role that Mr. Steinmetz in negotiating a deal with Guinea. That is just clearly -- that is untrue. He may -- he may have been involved in assisting discussions, but we got notification from Dag Cramer --

THE COURT: You're talking about the settlement.

MR. PETERS: Yeah. So we got notification from Dag Cramer --

THE COURT: Okay. No, I think what I meant was in the underlying transaction to begin with, right? So there was originally in a relationship, then Guinea terminated the relationship, and then I know there's a settlement. And what my comment was about his role in the initial transaction.

And just to be clear, and I know he's been -- again, to use an often-referenced legal principle from Broadway -- in the room where it happens as to settlement; he's been involved. I'm not saying who had the pen and who had ultimate authority, so I'm not casting any aspersions on anything while the foreign representatives have been in place. But I don't even, again, need to go there.

If he's -- when I look at COMI, I need to look at where has business been going on, who's been doing what, sort of going back in time. And so, that's -- I think enough of a showing has been made on that. So I'm not trying to be -- to parse that too finely because, frankly, I don't have enough record to do that. I have enough record to say he's involved enough that he's a fair game for discovery.

MR. PETERS: Okay. Can I just ask, Your Honor, please? If the Cleary's do bring this back onto the table,

we would like the opportunity to respond vigorously against the allegations regarding settlements.

THE COURT: Well, I think what's been put on for right now is a basis for discovery. I've made a ruling. So I certainly hope, for purposes of discovery, we don't have it come back on. If it ultimately becomes an issue at trial, everybody preserves their rights to present as full and complete and fulsome a record as you want on those issues, so I'm not making any findings on the merits of any of that. COMI is not in front of me today, and we'll get there eventually.

MR. PETERS: Okay. Well, thank you for giving me the opportunity to address the Court. Thank you.

THE COURT: Thank you.

MR. ROSENTHAL: Your Honor, addressing the document issue. I have to say I'm extremely distressed here because, you know, while Mr. Peters is not an Officer of the Court, the Court has given an opportunity to address his counsel rather than have him address the Court through witness testimony.

And what we've heard today is, unfortunately, quite different from what Mr. Peters stood up and told you last hearing. And it's really distressing, in light of some of the representations that were made leading up to these hearings.

THE COURT: Well, here, I want to go through the other merits issues and then loop back to production schedule and where we are and all that stuff, right, because I think the legal issues inform the production schedule. So everybody reserves their rights. And, frankly, as you know, judges generally are less concerned with the history of discovery than they are with how do we get to the end.

MR. ROSENTHAL: Absolutely, Your Honor. I agree with that complete. Ms. Balter is going to address the GDPR issues that were most of his argument. I would address, when we're done with the discovery categories, the production information that we learned in some of the -- well, not just inconsistencies.

THE COURT: And I think we also have the former and current directors in Onyx and that's going to involve it. So let me ask, there are some nice folks who are in the courtroom for an 11:30 matter. I think we are going to be here for a while in this case. So my question is whether now is an appropriate time to take a break or how do you want to handle that, because I think we -- I mean, I'd be stunned if we didn't have at least an hour. And I think, you know, what beyond that, I'm not -- I have no powers of prediction.

MR. ROSENTHAL: What I'd recommend, Your Honor, just because I think that the former officers and the

current officers issues, the legal issues are really no different in many respects that what you've already decided with respect to Mr. Steinmetz. I think we could probably move through those pretty quickly.

THE COURT: All right. So why don't we do those then and take a break? All right, yeah. My understanding is that -- and you can correct me if I'm wrong -- that you want documents, to the extent that they're in the possession, custody or control and deal with former or current directors and officers, as well as Onyx, Nysco and Balda, to the extent that they involve the business of BSG.

MR. ROSENTHAL: Exactly. And in terms of the possession, custody and control standards, again, we're in the Second Circuit, it's the practical ability standard, and the case law is very clear that they have the --

THE COURT: I think we've sort of beaten that to death. So let me hear from the other side because, again, what I thought was important to just clarify for the record before we have this conversation. It's to the extent that they have possession, custody or control over those documents to be practical matter and they relate to the business of BSG.

So it's not -- if there is a document of a former or current director, that they have possession, custody and control of that, that does not deal with the business of

BSG, you're not asking for that.

MR. ROSENTHAL: But it has to fit within one of the categories that the Court has already sustained as being appropriate for discovery as being relevant.

THE COURT: Right.

MR. ROSENTHAL: But, Your Honor, one caveat. To the extent that I think under the factual record that exists before the Court and is, frankly, uncontested because they've chosen to argue separate issues. Under the factual record, I think that the Court should find, as other courts have done, they have the practical ability to obtain this. And, therefore, it's no longer this is just round one, and round two is later on when they say, sorry, Judge, we don't control this. They've already argued that control issue.

MR. HYMAN: Your Honor, regarding that. It's impossible to rule on practicality unless there has been an effort made to seek discovery of the docket and make a request. So I --

THE COURT: Well, let me take the scope of discovery, what's asked for first, and then we'll deal with the control issue. So they've asked for things that would fit into the discovery request, meaning it deals with BSG, the business of BSG, such that it would be relevant for purposes of COMI under sort of the American standard of discovery. Do you have any quibble with that?

MR. HYMAN: Not with the scope of discovery, Your Honor, but, you know, we talk about the facts that are in the record. The facts that are in the record are the articles that have been attached to the first letter, that was a letter dated --

THE COURT: But I don't need to get into the articles, if everyone agrees about the appropriate scope of discovery and your argument is about control. So my thought is that I've made a ruling as to Mr. Steinmetz about the Royal Park factors. Again, this is pretty well-established stuff. I don't normally make rulings about control when people have discovery obligations because it's assumed, it's part of the air we breathe in terms of civil cases and discovery, so everyone understands what their obligation are.

And if the foreign representative on behalf of the Debtor has an ability to, as a practical matter, to get documents that relate to the conduct of BSG from the former directors, current directors, Onyx, Nysco and Balda, then they're obligated to do that. So that's just the way it works. So what is it that you want to talk about with that context?

MR. HYMAN: Because I think that we've gotten a little bit twisted in terms of economic relationship. I think when you look at the cases, the economic relationship

is, again, the ability of the party that's requesting production on a third party to exercise some leverage in an economic basis over that party. Here, I think this is all of the converse as it relates to the former directors. There is no continuing economic relationship between BSG or the joint administrators and the former -- and the former directors and officers.

THE COURT: But that's not the test.

MR. HYMAN: That's a part of the test.

THE COURT: You've made it -- you've made it very clear repeatedly, even when dealing with Mr. Steinmetz, that from your client's -- from the foreign representatives point of view, they are in control and other folks don't matter. But for purposes of COMI, I'm supposed to look at who's actually done what business and how things have developed and what the center of main interest is and what's actually been going on, what's the economic substance.

And even instances talking about change of COMI from one venue to another, I have to have some understanding of sort of historical things to compare it to new things to find out whether that purported change in COMI is legit, is done for any improper purpose, what the legal standards are what they are.

So, again, to the extent you're relying on the fact that everything changes, and the only people who are

relevant are the foreign representatives once they're approved and, therefore, that's the lens in which to understand discovery, I reject that premise.

MR. HYMAN: But typically, in a COMI shifting case, as I understand them, Your Honor, if it's a shifting of what looked like COMI in the first instance to a new jurisdiction created for purposes of filing. That's not what we have here.

THE COURT: No, I know. But what I'm saying is, cases -- COMI shifting cases are relevant to the extent that you're talking about people talking about timeframe and saying you can cut off, this is what I do right this second, and I don't anyone to look beyond that. And courts do look beyond that because they look to see, well, what changed and why did it change and how did it develop.

So, again, this is discovery. Everybody has a right to be heard on the merits when and if we ever get to the merits of this case. And so, again, I usually don't have this kind of issues just come up repeatedly. If there's emails dealing with BSG and you want to talk about the relevant COMI time period, we can have that discussion.

But, frankly, if you look up any of the cases, that will tell you what the relevant time periods are. I'm not changing that; that is what it is. So through that lens, whatever exists as to these category of people dealing

with the business of BSG, it's fair game.

MR. HYMAN: Except that we, you know -- in order to establish possession, custody or control, we believe that the burden is on the party seeking that discovery.

THE COURT: Do you really want to go there?

MR. HYMAN: No, I don't. I don't. But I want to address, though, is some of the evidence that they've been relying on which --

THE COURT: I am not taking in news articles, bits of information for purposes of making value judgments in this life or the next. I am looking at things to try to get through discovery; that's all. So everybody reserves their rights. I'm not -- judges are remarkably facile at saying here's discovery and then they get to trial, just as we are facile in separating our personal views and any frustrations in the case leading up to trial. So it is what it is. We'll get there. Everybody will get a fair shake on the merits of anything they want to argue.

But for purposes of discovery, my ruling is just what I said, which is that viewed through the lens of COMI and the relevant time period -- that is well-established in cases in the Southern District, and including a few that I've issued, decisions on Chapter 15 cases, everybody knows what the period is; that if there's information within the possession, custody or control under the Second Circuit

standards that deals with these folks -- current and former directors, officers, Onyx, Nysco, Balda -- that is relevant to the business of BSG and COMI, I find that's appropriate to produce and that I'm ordering to be produced.

And so, I'd ask that that go into the proposed order that's going to be submitted after today's hearing.

MR. HYMAN: Your Honor --

THE COURT: So for that, given that I have less information, I'm going to decline to get into Royal Park issues for right now, in terms of it's a more complicated web of things to figure out, but I can't imagine anybody wants to have further discussions about what I think. Again, we're making something overly complicated that, for purposes of discovery, is just not that complicated.

So if a deal -- I mean, so Onyx was alleged to be back office support. My understanding of the record is that they used to be called BSG Management Services, Ltd. So, I mean, some of these things are just -- I'm not sure why we're fighting about them. So, again, you view them through the lens of COMI and the relevant time periods for COMI, fine, but it's fair game.

MR. HYMAN: Your Honor, as it relates to Onyx, there is no contractual relationship with Onyx.

THE COURT: I know --

MR. HYMAN: If Onyx wants --

THE COURT: -- because you always talk about the present tense, right now. I understand that, but, again, I'm repeating myself. There are plenty of other issues to get through. My ruling is my ruling, and it serves nobody's interest to go back and forth on these things. So you all are entitled to a decision. You may agree with it, you may not agree with it -- that's what Courts of Appeals are for, but we've got to move the case forward.

So I think with that, we've gotten through those two issues that are related -- Mr. Steinmetz and the one we just discussed. We need to go through the GDPR protocol issues.

MR. ROSENTHAL: The third one, Your Honor, is actually subsumed within the last one. But we have an additional argument, which was the current directors -- you lumped the current and former together. But there is a current director, which is Mr. Cramer, who, in addition to everything else is a current director of the company.

THE COURT: Well, I'll say what I said to him. There's -- it's well established what the relevant time period is for COMI. And so I have nothing new or, you know, of value to add to what's well established in Circuit precedent and in this Court's --

MR. ROSENTHAL: I'll just -- if I can just note on the record, Your Honor, just with respect to Onyx because

maybe Mr. Hyman isn't aware, but Onyx is run by Mr. Cramer, their director.

THE COURT: Well, I've already made a ruling. I don't think we need to go there, wo here's what I'd like to do. We do need to talk about the other issues, which I think are somewhat different than the ones we've covered thus far. My thought is to talk to you nice people after lunch, so why don't we come back at 2:00, rather than have you come back and wait around. And so, I think that that'll work.

And so, unless anybody has any parting wisdom where it would actually be of use to you before you go off to lunch, we'll just circle back at that point. All right. Thank you very much. All right.

And CourtCall Operator, I'm going to keep the line open, obviously because we have another matter that's on for 11:30, and that matter will be done before 2:00. And we will then call back at 2:00, and anybody who is on the phone for the BSG matter can call back. You can either just stay on the line or call back in at that time. All right?

COURTCALL OPERATOR: Yes, Your Honor.

THE COURT: Thank you very much.

COURTCALL OPERATOR: Thank you.

THE COURT: I sometimes forget to give that speech and there's confusion that results, so I have to remind

myself that that's an important thing to straighten out.

(Recess)

THE COURT: We're back on the record in BSG Resources Limited, a Chapter 15 case to continue our discussion about the issues raised in discovery in connection with initially the motion for a protective order and then the extensive letters back and forth on a variety of issues.

We got through a number of issues this morning and so I think we were going to pick up with the GDPR protocol and the issues that are identified in the letters on that.

MR. ROSENTHAL: That's right, Your Honor. And as I mentioned, my colleague Ms. Balter will address that.

MS. BALTER: Good morning, Your Honor. We wrote to Your Honor after an extensive back and forth because we're at an impasse on several GDPR issues. There are three issues that are principally in dispute. The first issue concerns the joint administrator's responsibility to identify on a specific basis the categories of personal data that they've adapted. The joint administrators have agreed that where a document contains redacted personal information they will provide a log and that log will identify the category of personal information.

The issue comes up where a single document would have multiple redactions. In that case the log would

identify the various categories of redactions that the joint administrators say that they won't identify for us which category concerns which redaction. They're now saying that this would add an additional million dollars to discovery. Your Honor, we think that's inconceivable. This is work that has to be done in the first place for them to simply identify the category of data that's been redacted.

THE COURT: Well, let me ask you. I heard a question before about text boxes and I wasn't quite sure if that was the same issue or from a different angle or a different issue. Because, obviously, we've all seen privileged logs and privileged logs may say Page 20, Line 2, this redaction -- or people can do it on documents, they can do it lots of different ways. So, maybe you can help me through that issue.

MS. BALTER: Your Honor, we'd be happy for them to do it in either way. Either to specify directly on the document itself that they're redacting -- you know, do the redaction box and write in the category of personal data that's being redacted on the document if they'd prefer to do it with a log. We just want to make sure that that log does identify the page and the particular redaction that corresponds with that category so that we don't have to go back and reinvent the wheel.

THE COURT: So you can see the context.

MS. BALTER: Exactly.

THE COURT: All right. Would you be okay with, as might be the case, certain things that if you can tell by the context -- so, for example, if you have an email and you have a CC, and you have a blacked out thing -- let's just use that as a hypothetical for a second, you could pretty much tell from the context that that's an email that's been redacted and that whatever your general -- their general comment about it, it would be covered by -- you know, they could say all email address redacted are based on this, that, and the other thing.

So, I would assume that if there was certain circumstances where it's very clear by context. Now, that may obviously not be all circumstances but there might be a limited number where that would be true.

MS. BALTER: I can see that circumstance where you'd have a CC box in there and numerous redactions and they say we've redacted all of these because they're personal emails. That would be the category. I think the issue comes up where there's something in the CC box, there's something on Page 3 of the document, there's something on Page 5 of the document and it listed out two to three categories of information and we have to go back and reconstruct them.

As we say, we can figure out that one is an email

address but for the other two we'd have to, again, just reinvent the wheel. That's information that they know when they're doing the redaction itself, so it's easy enough for them to just identify it for us so that we don't have the burden. The burden should be on the redacting party.

THE COURT: All right. So, let me ask, does it makes sense to go back and forth in each one of these until we sort of get an answer on each rather than take them as a group? What would you prefer? I don't know how long your --

MS. BALTER: I think that makes sense, Your Honor.

THE COURT: All right. I don't want to -- if your whole presentation is not too long, I'm happy to take them all it once. But it sounds like we'll do it one at a time. So, let's talk about this issue about specific data, and logs, and text boxes and all sorts of exciting things that everybody loves to talk about.

MR. HYMAN: Absolutely, Your Honor. And in advance to today, we made an example of two documents, one which would be produced in the format that the joint administrators have been going through and doing their production to date, and another as would be produced under the suggestion.

THE COURT: All right. Do you have a copy for counsel?

MR. HYMAN: I do, I do.

THE COURT: All right, great. Thank you.

MR. HYMAN: May I approach?

THE COURT: Thank you. All right. So I have the documents and I just have this ticket that says Vale Proposal and JA Proposal.

MR. HYMAN: All right. So, this is, Your Honor, an example of just one of thousands and thousands of documents that are being produced. And you can see, obviously, this is an example that has quite a bit of personal data in it.

As those parties that are going through the documents in the first instance to review them for GDPR information, on their screen it shows a drop box, which is what you were referring to. The drop box allows them to check a box for a specific category of personal data that they are redacting. It does not require them when they redact it to go in and type specifically for each redaction what that type of information is.

When we're talking about thousands of documents in the form of the Vale proposal, that requires for each redaction, rather than just hitting a box that redacts the information and clicking another box that has the category of information, it requires them to go in manually for each one of the redactions and identify it.

THE COURT: Now, let me ask you. This is a form so this may not be very illuminating for other more narrative documents. But certainly this form, to the extent it has a date of birth line, and a nationality line, and a column for signatures, you can tell from the context what these are. So, and that's why I ask the question. I think I'd be fine and I suspect the other side would be fine when in that context it's very clear, so you don't need to specify that it's somebody's date of birth because, in fact, you can tell that from the context. It's very clear.

I guess the harder thing is when you have a memo. And so you have a memo and it has sort of an ongoing narrative discussion, perhaps lengthy and it has various things redacted and you can't tell what a various thing is from the context.

MR. HYMAN: In our proposal, in the joint administrator's proposal of the redactions this would still be accompanied by a log and the log would identify the different types of categories -- of --

THE COURT: Would it identify it by page so you can actually tell what's what? I mean, I think that that's right.

MR. HYMAN: It does not because that is another level of expense to go through. The way --

THE COURT: But if you can't tell from the context

what it is that's redacted, then I think -- isn't that relevant information for purposes of the privileged log when you have an invocation of privilege? And we're not even talking about Chapter 15, we're just talking about standard -- standard privileged stuff and the local rules on that. That you'd be able to identify and say, well, this is what's redacted because we're telling you what it is because you wouldn't know from the context and you can't...

So, for example, if somebody's reading a paragraph in a memo and that paragraph turns out to either, on the one hand, be incredibly relevant to various things that the other side is interested in or not at all relevant, they might say, I'm curious what it was that was redacted from the paragraph. Or given that it's not very exciting and the redaction is this kind of redaction, I could care less.

MR. HYMAN: For these types of documents and these types of redactions, which are -- they're set forth in the proposal for the protocol, right? They're very limited types of information. It doesn't recall -- it doesn't require blocks of redaction that would not otherwise be relatively obvious from the context.

THE COURT: My hypothetical assumes that you can't figure out from the context what it is. So, if a memo said, we met with an individual, comma, redacted two words and an initial, comma, at so-and-so place and whatever to

discuss... Well, you could tell from the context what that is. But if you had, say, two lines redacted and the lines are completely redacted and you couldn't tell what they are, do they contain information that's names? Is it privileged legal information? What is it? And you don't tie what the justification is to the area of the document, then people completely see as to what it is.

MR. HYMAN: To the extent that it was privileged information, that is absolutely included in the log and identified specifically, is that correct?

MR. HITCHING: Your Honor, Jarret Hitching. To the extent something's being redacted for privilege, that is receiving a separate designation that says Redacted For Privilege versus Redacted for GDPR.

THE COURT: Right, but what I'm saying is if you can't tell -- so privilege is fine, but if you can't tell what the GDPR redaction is from the context, I would think that it makes sense to identify that. Again, this sample is sort of the -- kind of the layup, right? Because you can tell date of birth, nationality, signature, so you know.

So, you had me at hello on this. I'm fine with this kind of form of redaction, your proposal with this kind of document. But I am thinking about ones that are not essentially forms where the box you're filling in tells you the answer of what's redacted. And I don't know -- do you

have any other samples of things that are redacted that might be harder calls?

MR. HYMAN: I don't have any samples with me, Your Honor, though. But what would accompany our version of the protocol would be a schedule, a log at the end that identifies the types of personal information. We think it's unlike --

THE COURT: I understand that. But that isn't... Again, what the whole point of a log is, which is often overlooked, is that it gives enough information so people can decide what they want to go to war over, right? And so some things they may say, well, I really don't care about this. That's what discovery is always about. Which is saying you can either write about things theoretically, in which case we'd all have to quit our day jobs and just do that, or you can say what is a practical matter do I really care about? And so that's why producing documents is usually helpful when fighting about what's in the documents.

And that's why when talking about privilege, the additional -- the only real point for those logs is that somebody can say, well, I can gauge what that is and whether I care enough to fight about it. Or if I'm going to fight about it, whether I can lump in it with other things or whether it's a one-off, it informs the rest of the process.

So, for this stuff I'm fine. When you can look at

it and say I know what's been redacted, I have no problem with it. But if -- and, again, see, the problem is without some example I don't really know how this would play out. But so my concern is instances where the other side can't figure out what was redacted and, therefore, isn't in a position to make an informed decision. And so that'll lead to further discovery in litigation. And so that's what I'm worried about.

Again, this doesn't bother me. If there are forms that are like this, again, I don't think -- she'll correct me if I'm wrong, but I don't think that's what they're worried about that.

MR. HYMAN: No, I appreciate that, Your Honor. We don't think that's what they're worried about either. I think that we would argue, though, for virtually all instances you should -- in matching it up with the log that attends it, you should very easily be able to determine what information was redacted.

We do include a proposal or procedure in the protocol to the extent there are any disputes as to whether information should have been excluded or not excluded to designated certain individuals, and somebody has a direct phone line to somebody and can answer a question. I guess the concern that I have is, in an effort to try to save some costs and "expediate" the production --

THE COURT: I understand that, I understand that. But it's hard for me to evaluate what you're saying without seeing the documents. Again, if the context is clear, then the context is clear. Then nobody needs to waste the time. But if the context is not clear, then the question is well, would it be helpful? And, frankly, to comply with a -- what a privileged log is supposed to do, which gives you -- i.e., gives me enough information so I can assess the basis of the privilege. If you have a context that doesn't inform the redaction and you might challenge it if it's certain kinds of information but you might not challenge it if it's others, I don't know how you'd make that decision without it.

So, my thought is to say that where context is clear, I'm fine with the way you're doing it. But where context is not clear and nobody will be able to figure out what's redacted, that the log -- you can do it any way you want but I would imagine it's least expensive to just have the log say Page 28, personal information, you know, and just identify what the personal information is just so we don't have to spend -- so this isn't the opening salvo of another extensive fight on discovery, which is also expensive. So, that's what...

Now, if you want to prepare a couple of samples where you think there's some specific guidance you want from

the Court and say, hey, look, in this sample we can tell you this is the kind of thing we don't want to do and we think we can demonstrate that to you, I'm happy to look at the samples. But if it can't -- again, my hypothetical assumes that you can't tell by the context.

MR. HYMAN: Yeah, I think that what we're concerned about is that we will have a dispute as to judgment calls, and there will be just a continuing effort to require us to go through and identify information. But I take your point, Your Honor. Unfortunately, the way the system works today is it would be very easy if when the log was produced, the log identified the types of personal information in the order in which they were redacted from the document. That would eliminate all issues. Unfortunately --

THE COURT: Listen, there's lots of ways to do this. And so, for example, you don't produce a privileged log that says Privileged and that's all it says. There are different kinds of privilege. And so you've got to give enough information to somebody to make an intelligent decision to think about the issues.

Now, I don't know if there's any distinction between what people have been talking about for Category 1 versus Category 2 on this and whether that distinction is -- let me ask Vale's counsel if that distinction is anything we

can use in this context to try to advance the ball.

MS. BALTER: Your Honor, I don't think that distinction will advance the ball here because for Category 1 data there's a presumption that it's relevant to the dispute and that they can redact it. For Category 2 data, the presumption is the opposite. That it is relevant to the dispute and that it should not generally be redacted. And where they do redact that, they have to provide an explanation.

So, this is largely going to be about Category 1 data. And in that case, it's (indiscernible) burden to raise any kind of objection. And so as the redacting party, we think that the onus should be on them to facilitate our understanding and to make sure that we can raise an objection where necessary.

THE COURT: Well, let me ask you. Right, there's a lot of different ways judges deal with discovery and some of it has to do with what parties are willing to live with in terms of re-review and re-redacting, which is sort of a nightmare scenario that I daily not like to be in, but sometimes people are willing to assume that risk.

So, if Category 1 is about things that clearly are covered by the GDPR and so there's not really a debate about that, so from their point of view it's in a stronger position, does it make sense to at least let them go ahead

and do some tranches that way and then we can have a further conversation? But it's caveat emptor. This is what they're suggesting. And if it turns out it doesn't work, then it doesn't work and we're going to have to go -- we're going to have to take one step forward to take, you know -- I mean, we're going to have to take a step back before we take another step forward.

MS. BALTER: I think the issue, Your Honor, is we just don't want to kick the can down the road any further. We've been negotiating this issue for over a month at the very least now. As you said, we're fine with this kind of document but this is for layup. We have received so few documents that it's hard for us to look at a lot of examples. But we don't want to --

THE COURT: Do you have anything handy that I could look at? Again, I'm putting you on the spot. Fine if you don't. But where -- again, because the devil's in the details, and I'm -- it's always -- I always talk to lawyers about how it's terrible to have to fight about theoretical rights rather than practical things because then you really have to raise issue. But it's the same for judges, right? If I can't sort of figure out what it looks like as a practicality, then I'm sort of theoretically doing something. And then my utility and my -- what I hope for is accuracy in trying to figure out a just result goes down

considerably. So, my batting average isn't as good. So, I don't know if you have anything that might inform this particular discussion.

MS. BALTER: Your Honor, we don't right now. I think that's largely a product of the fact that only 211 documents have been produced to us and not many of them implicated GDPR issues to begin with. So, we just haven't had the kind of production that gives us the insight we need. But we also are concerned about a situation where we'd be asking them to reproduce things, we can imagine, like the joint administration will come back and complain about the expense there.

THE COURT: Yeah. Well, but --

MS. BALTER: So, we want to get this resolved so that we can really move forward with document production.

MR. HYMAN: Your Honor, the argument that they made in their letter with respect to personal email addresses and nationality was that it was so crucial to the determination of Comey. Personal information or personal email addresses and nationality could relate to numerous people, whether they're connected to this case or unconnected to this case.

THE COURT: We've segued off to a different topic, right?

MR. HYMAN: Okay. We have. So, let's go --

THE COURT: I mean, right? Because we're talking -- I think we were talking about redaction and now we're going to substance, which is can we redact this stuff and what's the presumption and all that sort of stuff in terms of whether it's tied to the case.

MR. HYMAN: Right.

THE COURT: So, here let me make a suggestion and you'll tell me whether you can live with it. I'm willing to go along with your proposal as an interim step but with one large caveat, which is if it becomes a problem and they say we can't -- so they can take a document and they can say I have this letter and here are some things that are redacted, and we can't figure it out, and this is exactly what we were worried about, then you may have to reprocess that document or categories of documents that are like that document.

MR. HYMAN: Your Honor, Jarret Hitchings is more than available to answer any phone calls as it relates in that regard.

THE COURT: No, no, no, but that -- you're not answering my question. You're answering a question I didn't ask that's a better question for you. So, I'm telling you if that happens and then it turns out they say this is the problem, we addressed it at the hearing, it turns out it really is a problem. This is redacted. We don't know among the laundry list of things that are identified what the

redaction is. We can't make an intelligent decision. Looking at this document, it implicates a lot of things we care about and we can imagine a whole bunch of scenarios, and this is not the only document. We've got a couple samples, and we need to go back -- we need them to go back and reprocess the documents.

MR. HYMAN: Absolutely.

THE COURT: All right. Because that's -- and, again, that means that sometimes you can pay upfront or you can pay later. I don't know. But that does leave you vulnerable to that problem.

MS. BALTER: Your Honor, just to clarify one point. That wouldn't be just for the particular documents that we use. I mean --

THE COURT: Well, if you come back and you say -- and it's always great as a lawyer to be able to do this, by the way. So, for your own personal career moment where you can say, Judge, the thing we told you was going to happen, it has happened. And so then you can make your case. And so I'm not going to preclude you from doing that. What I'm hearing is they think it's not going to be that big an issue and that if you pick up the phone and there may be a stray thing here or there, that you can work through it.

And if that's the case, that's the case. But if it's not the case, then you pick up the phone and you say,

I've got 200 of these documents and I can't -- it's the same problem over and over again. It's exactly what we said. Then I will not hold it against you that they were already processed a particular way. Again, it's caveat emptor. You know, buyer beware. If you make this suggestion and it works out the way you want, great. If it doesn't, then you have every right to come back and say we told you this was going to -- we suspected this was going to be a problem and we're back.

So, it would not be necessarily limited to one document. It would be limited to whatever -- whatever the shoe fits. That well-known legal doctrine.

MS. BALTER: We'll make sure that if it's -- whatever shoe fits doctrine goes to -- if this seems like it's going to be a problem, that we're making sure that it's applied.

THE COURT: Yes, and here's --

MS. BALTER: And not just twisting our document -- if they don't come back and say, well, we can't apply this to all the rest of the documents. We have to process all the documents we processed before.

THE COURT: No, you reserve all your rights. And what I would suggest is that because all of you have better things to do than to sort of be mired endlessly in discovery that -- I heard a mention of tranches of documents being

produced. That as the documents are produced, that you all talk to one another about it. And so if this -- if you get documents and say this is a really big problem, we need to get in front of this, you talk to each other and you say, hey, what are you going to do to fix the concern we have? Maybe you fix it, maybe you don't. If you don't and it's a big problem, then you call chambers, set up a call and we'll essentially continue this same discussion.

So, that would -- and it sounds like they can live with that because they think as it goes forward it won't be that kind of a problem. You have your doubts and I, frankly, don't know enough to make an intelligent decision. But as long as they're willing to live with the "we need to take a step back" approach and reserve your rights on that, then I think we'll see how it goes.

MR. HYMAN: Thank you, Your Honor.

THE COURT: All right. So, I think -- let me then hear from Vale's counsel. There were three issues. That's number one.

MS. BALTER: Right. The second issue --

THE COURT: By the way, I would think we could put this all -- everything in an order. So, we could -- you know, so we've addressed the things this morning, they're going to go into an order. This would go as to the redaction of personal data on a specific rather than general

basis under GDPR protocols. Joint administration proposes the following. The Court will provisionally -- it will use -- will adopt the joint administrator's proposal with Vale reserving all of its rights if the lack of more specific identifying a thing for each bit of information is problematic for purposes of protecting your rights to assert the challenge to privilege or something else, then you reserve the right and the Court will make any rulings in the future on that as if the matter was raised in the first instance.

I'm sure you can wordsmith that better than what I just threw out there. But I think, again, just so we all have our own go-by going forward, I think the order will sort of become, hopefully, one stop shopping so that we don't end up mired endlessly in discovery, which is nobody's goal. So, all right, as to Issue Number 2?

MS. BALTER: Right. So, the second issue, Your Honor, is whether personal email addresses and nationality or association with country should fall under Category 1 or Category 2 of personal data. I touched on this. Category 1 is data that is presumed unnecessary to resolution of the dispute. And so as a general matter that data will be redacted.

Category 2 of personal data is data that is presumed to be necessary to resolution of the issues in

dispute and so that data (indiscernible) will generally not be redacted. We're talking about one stop shopping and you had mentioned something similar to this earlier. I think this entire issue could be resolved if Your Honor has an order that says that these issues, personal email addresses and nationality or association with country are relevant to the resolution of the dispute, that would provide all the protection that they need under GDPR and we don't even have to worry about redaction in that circumstance.

THE COURT: All right. All right, anything else from Vale on that issue?

MS. BALTER: Yes, Your Honor. That said, both subjects are critical to Comey and they're also critical subjects of discovery. The joint administrators have, in fact, not even tried to argue that nationality or association with country is not relevant. They merely say that it's inconceivable that Vale wouldn't know the nationality of the directors, officers, and other employees of BSGR.

Now, Your Honor, even if that were true, which is impossible for us to assess because right now the joint administrators have not even provided us with documents sufficient to identify the directors and officers of BSGR. But even if that were true, it doesn't change the fact that this is directly relevant to the Comey inquiry, and that it

doesn't justify presumptively redacting this data for purposes of GDPR.

THE COURT: What about personal email? I was a little less clear what the specific email is going to tell you about Comey. It will tell you, I guess -- who's on the email is one thing, but the precise email, I'm not sure that it tells you anything about nationality or location necessarily. So, what's your thinking on that?

MS. BALTER: So, I think there are two issues with that. The first is that it will -- it is relevant to the scope of discovery, as we've been discussing earlier today. We do need to know the personal email addresses. Those do need to be searched for for the directors and officers, and we don't have that information.

The joint administrators have said that the production of documents would be -- it would identify people who are -- have little connection to the historical operations of BSGR. But the only example that they've given of that is an email of that redacts the email address of Asher Avedon, who was actually the president and the CEO of BSGR Guinea, a key subsidiary of BSGR. So, that's clearly a person with a major connection to the historical operations of BSGR.

And then I think Your Honor asked also about Comey. For example, we know that personal email addresses

of Dag Cramer are being used from a company called Norn Vernandi. Where that's located, where he's sending that from, that's information that is important and that goes directly to the Comey inquiry about where a director of BSGR is actually conducting his BSGR-related business through this other country. So, that kind of information is actually relevant to Comey.

MR. HYMAN: Mr. Kramer's email addresses or the one that was just referenced are business email addresses and those are not being redacted. We are also happy to stipulate to the identities of various members of the board of directors at certain points of time and where they're located. What we're talking about here, though, is personal email addresses of anybody that may be mentioned in any one of these documents and their nationality.

All we are saying is that the general rule for that type of information, which we really -- other than in some very certain -- you know, particular circumstances might be relevant, although whether somebody's Swedish or not, I'm not sure that that's more relevant than where they're actually operating --

THE COURT: No, but it might give you some indication as to where they may conduct business, right? I mean, so I don't think when you think about discovery, the old test used to be reasonably calculated to lead discovery

of admissible evidence that's been thrown over the transom. But the idea is it doesn't make sense. Would it be helpful when weighting all the costs and burdens?

So, I mean, the way I think of it is if you were doing this in a domestic case, you'd have the email addresses on there. You might have them for attorneys' eyes only because you wouldn't want to have an unwarranted personal intrusion. But otherwise, everybody's in the situation where you're going to have to assess the email circumstances and the address email by email, person by person. And that sounds like a bad thing for you, it sounds like a bad thing for them because it's contextual -- in the case it may be contextual. In the email -- and so I don't know that you...

So, for example, if there's a personal email of somebody who's on a CC, who never shows up other documents, well, in hindsight, that will turn out to not be necessary for the case. But if there are personal emails that recur numerous times from folks who were involved in BSG business, and there's a question for purposes of Comey as to well, where are they doing things? Are they in Israel? Are they in Guernsey? Are they in Switzerland? Are they somewhere else? Where are they actually doing things? And there's just where their personal residence is, and we have to put together sort of a mosaic picture of things, then it would

be relevant.

And so, I think as a matter of discovery because you can't figure this stuff out ahead of time, it seems in a domestic case to be perfectly appropriate, but I would take protections so that people's individual emails are not floating around everywhere in the record of the case because that would be, I would think, in appropriate. It would be our own little American domestic version of protecting somebody's privacy.

So, but I do think that as a general matter, when you have emails and they're business emails, and then somebody's personal information because they have a person email but it deals with BSG business, we've generally viewed it as fair game.

MR. HYMAN: Your Honor, in virtually every context we're not talking about eliminating or redacting the person's name. All we're talking about is redacting an email address and references to nationality.

THE COURT: No, I know, but that wouldn't happen in a domestic case.

MR. HYMAN: We don't have GDPR to contend with in a domestic case.

THE COURT: Yeah, but I can make a finding that it's relevant and appropriate because I would make that finding in a civil case if somebody required me to make a

finding one way or the other.

MR. HYMAN: But is it as to somebody that has nothing to do with Comey whatsoever --

THE COURT: But your hypothetical picks your set of facts that you want. They can pick a hypothetical that picks their set of facts and say we have somebody who's doing a lot of BSG business. It turns out they use a personal email, and it turns out their location is actually relevant to Comey. I don't know. So, that's why in discovery you would permit it and you would take protection.

So, unless there's something I'm missing, I will make that finding and then I will say (indiscernible) to establish United States law despite finding that it is appropriate and necessary for the case to proceed as a matter of discovery, that all personal emails will be treated as if they're under seal so that their private information is protected, and that we will have a discussion when we got to the merits to talk about how to use or not use any individual.

Because, for example, I can't imagine that every single personal email in any of the documents that are going to be produced is going to turn out to be relevant. It's going to be a much smaller subset, if at all, and then we'll talk about that in a context that's appropriate.

MR. HYMAN: Yeah. I think, Your Honor, our

position was not that we'd never produce personal email addresses where they might be relevant. What we were suggesting is that it should be the exception rather than the rule --

THE COURT: I didn't hear a proposal that would allow... I mean, then it becomes something where you get to decide where you think it's appropriate or not, and I don't know how to police that. And I don't even know, in my thinking about it, how you do that ahead of time. You can look at it and say, well, it seems to be kind of an important person so it's in the yes pile. Well, this person seems to be less important so it's in the no pile. And then that might be in the initial phases of review. By the time you do your later phases of the review, the person who's in the yes pile turns out to be not so yes, and the person in the no pile turns out to be not such a strong no. So --

MR. HYMAN: But that person will be identified in the document. Again, we're just talking about the personal email addresses.

THE COURT: I know but then we're talking about huge amounts of money to re-review everything for reasons that -- again, we wouldn't do in a domestic case because we would find that to be not valuable and not an efficient use of anybody's time. So, again, I'm going to make that finding that for purposes of the case, and that will go in

the order, and then I think that addresses the GDPR issue. But notwithstanding the fact that I find it necessary for the case and, therefore, to address the GDPR protocol, I think it is nonetheless appropriate to treat those personal emails as things under seal for purposes of the case, and any request to use them in open court will require permission and we'll have an appropriate vetting process when we get closer to the merits.

All right, so that's my ruling about Dispute Number 2. And then I think we have Dispute Number 3.

MS. BALTER: The third issue just has to do with what the partly redacted information under Category 2, the circumstances under which they provide redaction. The joint administrators have now agreed to provide an explanation when a category two redaction is made, but they've objected to specific language in Vale's protocol which says that such redactions should only be made in limited and exceptional circumstances. (indiscernible) is perfectly appropriate and necessary to define the circumstances under which Category 2 redactions can be made. They haven't really articulated a basis for their objection to that language.

THE COURT: So, Category 2 is the one where there's already been a finding of the information that's relevant to the case and so -- but there's a then -- what we think of as a more extraordinary or unusual invocation, say,

notwithstanding it's relevant to the case. So it really isn't covered by GDPR's protocol at this point because there's been a finding that's necessary or a concession that's necessary to the case -- that it is still nonetheless appropriate to redact.

MS. BALTER: Right. And they're required to provide an explanation under that kind of circumstance where they think it's not relevant and necessary. And we want to just make very clear that that's a limited and exceptional circumstance, and so that's why we've included that language.

MR. HYMAN: Your Honor, it's a subjective characterization. We're agreeing. I don't know that we've come across any instance where we've redacted Category 2 information. What we're objecting to, though -- it's not describing our reasons for doing so, it's just the characterization of it being extraordinary... I'm not forgetting the language. Limited and exceptional.

THE COURT: I don't want to get hung up on an adjective but at the same time I do think if it's necessary for the case, I'll use what I think is legally appropriate. The presumption is it's going to be produced. So I'm not going to call it extraordinary and unusual but that's the presumption because that means that there is no GDPR issue because there is a concession and, if necessary and you want

to put it in the order, I'll make a finding, that this is appropriate and necessary for the case.

So, if that's the circumstance, then the presumption is it should be produced. And where the presumption is something -- that means there is a burden on the side who wants to rebut that presumption to come forward with specific evidence and explanation as to why that's not the case.

So, I won't require the adjective but I will have described it in court as such and I think that that, hopefully, should moot out that issue. So, for purposes of the order, I think what you could say is that if something is in Category 2, which means it's understood to be necessary for the case, there's a presumption it's going to be produced. And to the extent that the foreign representatives, the joint administrators believe that it should not be produced, they will justify their withholding of the information.

MR. HYMAN: I think that's what the protocol already says, Your Honor.

THE COURT: All right, so that's that. So, what else do we have to -- after going through our long list -- and I'm very happy that my list of things mirrored your list.

MR. ROSENTHAL: So, Your Honor, I think now we

just have some miscellaneous things with regard to the productions, many of which are kind of red flags that came up when Mr. Peters was speaking that I wanted to address with the Court, and also some proposals in terms of going forward that we have by some of the things that were said.

I think to start with, I was a little surprised, Your Honor, that Mr. Peters isn't here now. He never said this morning after he spoke and we deferred it to this afternoon, that he wouldn't --

THE COURT: I don't want to -- again, every side gets to present their case how they want to present their case. And if I find it to be a problem that somebody's not here, then it's a problem and I'm not going to stand on ceremony, so I don't want to get bogged down in that.

MR. ROSENTHAL: That's fine, Your Honor. This is my segue into saying what I did say this morning briefly before we got into other issues, that there are some serious inconsistencies with what the Court continues to be told over time, you know, both in the letters, by Mr. Peters when he stood up -- not as an officer of the Court but not under oath. And maybe that's something that in the future we need to rectify, and today --

THE COURT: Well, I will say I understand him to be counsel, is that correct?

MR. HYMAN: I don't think he's a lawyer. No, Your

Honor, he is a forensic partner at BDO in the Accounting Group.

THE COURT: I consider that to essentially be a proffer by the joint administrators as to what the truth is. And so if somebody stands up in court and represents something and they do so -- to the extent it turns out not to be accurate, they do so at their peril. So, I don't know that I need to go crazy on the evidentiary aspect of it. When we're talking about discovery, if we did that for discovery we'd all be out on the ledge very, very quickly.

MR. ROSENTHAL: That's totally fine. I just wanted to point out, Your Honor, that there are some things and I do want to mention them now.

THE COURT: Right, yeah, so let's get to the meat of that.

MR. ROSENTHAL: So, what Mr. Peters said is, he said that there's a team of 15 people with (indiscernible) for GDPR and then it goes to Duane Morris after that for privilege. And Your Honor may recall that at our last hearing, before I had a chance to raise some concern, the Court sua sponte expressed concern that documents were having a GDPR cut or redaction before counsel was looking at them.

And Your Honor said on Page 14 -- you said, "Let me back up for a second. So, does that mean for the

categories of documents that Duane Morris does not have yet, that they are going to eventually obtain possession of those in un-redacted form? I mean, then there's no falter between what exists and what Duane Morris will eventually have access to." And Mr. Hyman said, "That's absolutely correct, Your Honor."

But now we're being told that the GDPR review is coming before the Duane Morris review, so it seems exactly what the Court was concerned about we were concerned about last time, and that we were all assured was not happening.

The second and related thing --

THE COURT: Well, let me sort of see if I can drill down on that. So, the idea is that there's counsel in the case and counsel is in a position to do things like make proffers and make representations to officers of the Court. And my comment notwithstanding about not standing on ceremony as to evidence in discovery disputes, we did talk about what Duane Morris is going to see as counsel and what that looked like and how it was going to work so that they basically were in a position to make representations because they really had knowledge of things from sort of the beginning to the end. So, what can you tell me about that?

MR. HITCHING: Your Honor, Jarret Hitching. Just to address the first point. Documents that are coming to Duane Morris for purposes are -- we can see what is flagged

for redaction. So, the text -- the redaction text is shaded, we can see the underlying information that is being masked.

THE COURT: So, you know what's been flagged but you can see what's been flagged?

MR. HITCHING: Correct. Correct. And, in fact, we have the ability to take that designation away if we deem it inappropriate.

MR. ROSENTHAL: So, that's obviously reassuring, but then the other thing is, Your Honor -- and I saw it again last time we tried to drill down and get a sense of the sequencing -- it seems to me like if it's already being redacted from GDPR with the shading and not the full blacked out redaction and then they're looking at it for whatever purposes, that -- who's doing the review? Because it's inconceivable --

THE COURT: You don't get to tell him how to do things. I want to make sure that counsel in the case has enough information, they can make their appropriate representations and that there's not any sort of wall that means that they're sort of all buying sort of representations and nobody's sort of checked them.

But I am not going to micromanage how they do this. It's not a good place for a court to be. It's not, frankly, something that... What I care about is the

results. And so I think as to the substantive issues we've talked about, you've raised a number of issues, I've agreed with, frankly, most of it, and so that's what I'm going to worry about. I'm going to worry generally about that I have counsel on the case who can speak authoritatively. I'm satisfied with the statement that's been made. If there's a specific cause or reason in the future to revisit that, we'll take a look at it. But I have no desire to start finding out in what sequence they're doing things. That's not -- it's just not a productive conversation. We have enough things to get through.

MR. ROSENTHAL: My apologies, Your Honor. I think I was unclear in the way I spoke then. Because my understanding from what was being said is that therefore counsel is only being given the documents that BDO has already decided are relevant to be shown to counsel. That's where my concern lies, because --

THE COURT: My understanding is that -- is, listen, people hire out folks to review documents and there's also AI that goes on these days as opposed to associates or contract attorneys sitting in large warehouse for months on end. And so that is what it is. And, again, when you are -- the way that discovery responses are supposed to be done -- there's a certification and the person who certifies is the person who steps up to the plate

as to the process. And so I assume that the discovery responses here will be no different. Somebody will have to certify what those responses are. If it's a BDO person or it's a BSG, whoever the person is, and then there are fair questions in discovery, in depositions, if you want to go that route, need to go that route about the process.

But, again, I don't think now is the time to -- you can talk offline but I don't think now is the time in court to have sort of an open inquiry about well, how are you complying with your discovery obligations? It sort of echoes some of whatever I said before, which is, you know, there are things that are the backdrop there and the very air we breathe and the world we live in about how -- what people's obligations are. And so that is what it is, and if people don't behave accordingly then things go badly. Eventually. Maybe not now, but that's how it goes.

MR. ROSENTHAL: Well put, Your Honor. And I just think that it just caught us by surprise in light of representations made last time, but we'll move on.

THE COURT: All right.

MR. ROSENTHAL: The other thing that concerned us with regards to what Mr. Peters said when we were first told there would be 37,000 documents reviewed and then produced by a week ago, and now they have 425 ready now, in a week another 516. And then he said that as they're reviewing the

next 28,000 they'll start uploading the next batch of it, was what he said.

And, again, it just concerns us that this is being drawn out. We're going to have production going on to next year. Because last time, on Page 71, we were specifically told it's all uploaded and the review's underway, and just, you know --

THE COURT: Well, I have the language of the letter on August 27th saying it will then be reviewed and gathered. Here's my concern. My concern was profound when I read that things were going to be produced next week and then things weren't produced. Because the purest -- the surest way to make progress in a discovery dispute is to start producing things so we can actually have substantive discussions. It's like the surest way to deal with a secured creditor is to start paying them. They don't want to talk to you until you start paying them.

And so my thought is -- I'm not naïve enough to think this is the last discovery conference we're going to have, but that I want to see production and that should also go in the order which is that what was said about what was going to be produced is actually in the order. Because, frankly, there were things that were said last time and it didn't happen, and we need to have these things in an order because I don't want to -- it can't be a moving target.

And so my goal is to get documents produced, reviewed and produced so that we can get to the end. So, there has still been a very, very modest production. We're talking about 211 new documents. So, and then other conversations you're talking about 1.2 million, 28,000, 37,000, all sorts of very -- much larger numbers that, frankly, are hard to even fathom given that we have 211 documents thus far. So, substantial production needs to happen soon, it needs to happen now. Nothing seems to be done on a rolling basis, which is what was represented was going to happen. I have representations from BDO today that they were start producing things daily. You know, the representations are there so that courts don't have to be make rulings, but then if the representations are made and they aren't followed through on, then courts need to make rulings.

So, rolling production is so ordered. It is required and must occur. And it will occur on the schedule that was represented in open court by BDO, who's working for the joint administrators, and that's what the order will reflect.

And so I understand you're understandably nervous about this and I don't know how to square what's gone on in this case with the notion of a Chapter 15 proceeding expeditiously, but Chapter 15 cases I'm discovering are much

like Chapter 11 cases. They all have their own personalities and we deal with what we -- what the case presents.

And so the elephant in the room that has not yet been mentioned today is what happens with the District Court and the request to -- that's been made that hasn't been ruled on, presumably, and the agreement to stay that through August -- through October 31st? And the answer is I don't know. And everybody preserves all their rights as to make any arguments based on everything that's gone on. And so the only thing I assume is that if the October 31st date comes and goes, that you all will figure out how you want to handle it so we can have some sort of -- we know what the process looks like. Are people running here? Are they running to District Court? How are we doing it? And to work that all out. That's so -- that -- we need to talk about that. Maybe now is as good a time as any, or maybe we need to get together towards the end of the month.

MR. ROSENTHAL: Well, I mean, on that issue Vale's position is clear, given all that's transpired or the lack of transpiring. We don't consent and we think that there's not anywhere near a basis for the Court to enter any kind of injunctive relief.

But on the subject of the productions, we actually have a proposal, Your Honor, that hopefully removes as much

of this as possible from the Court.

THE COURT: Well, before we segue from the injunction issue --

MR. ROSENTHAL: Yeah.

THE COURT: -- their -- right, so everything that is sent to this Court is sent to us from the District Court on an order of reference. So, here you have a live District Court proceeding, a live proceeding in the Bankruptcy Court, which begs the question where should the issue of injunctive relief be addressed if it needs to be addressed? And so we need to work our way through that. So, my desire is to certainly -- if the District Court -- the District Court will no doubt be familiar with the dispute based on the fact that it has things presented to it. It doesn't have the discovery issues that we've been dealing with here, but there's plenty of record of that.

If it's choosing to not recognize things, well, then we're in one world. If it chooses to recognize the judgment, it would seem, since that would -- that the District Court should decide the first instance, whether it wants to refer that -- any injunctive request down here or certainly address it itself.

And so my thought is that when you -- that that probably is something to tee up with the District Court when you hear from the District Court as to how to address that.

That would be my -- that's sort of my -- been my assumption, but I realize the only person I had expressed that to is myself internally, not out loud, and that I should share that with you. I think I've sort of hinted at that in the past, just because that's kind of the way it sort of makes sense in terms of -- we're a court that really gets our jurisdiction from the District Court, and if the District Court has a live case.

And I think Judge Glenn has done a similar thing. He said you should go to the District Court. I think it was another Chapter 15 where there -- and I don't remember the name of the case, where there was a question about injunctive relief pending something that the District Court was doing. And he said, well, the District Court would know I have the case. They are well-versed, so we don't have some of the -- necessarily all of the time saving economies where a District Court is sort of -- you're trying to withdraw the reference and they say, listen, you've been dealing with this forever. I just met you people and it makes sense to stay in Bankruptcy Court. But even then, the District Court gets to decide when there's a motion to withdraw the reference.

So, my -- again, this is my default, which is almost treated like a motion to withdraw the reference. You mentioned that the District Court -- if the District Court

thinks it would be helpful for the Bankruptcy Court to do it, I'm happy to do it. But at the same time the District Court will have its own independent basis of knowledge, and then there'll be other things you would talk about. But, frankly, it may work the other way, too -- is if I dealt with it, you may be telling me something about what the district Court's decision and various things.

So, that's my default. If somebody wants to make a run at it, you can let me know but --

MR. HYMAN: Your Honor, the status in the District Court action has not changed. There has never been a hearing before Judge Broderick. He has --

THE COURT: But I don't know that he's required to have a hearing.

MR. HYMAN: And he may not be, but I'm not sure that there's a real venue to seek injunctive relief there. I suppose -- I suppose we could but --

THE COURT: Well, but there's no venue to seek it here because there's nothing right now for you to... I mean, this is all going to come up when the District Court issues a decision if the decision is to recognize a judgment which allows them to move forward. At that point, you'd have to run somewhere. You'd have to run here or you'd have to run there.

And so what I want to avoid is the unnecessary

process related fire drill where -- well, we're going to run to both courts and we'll see what happens, or we're going to make a guess and we don't really know what Judge Lane may think or what Judge Broderick may think. And so I'm trying to avoid that kind of inefficiency by telling you what my default is and to say that if you get a decision from Judge Broderick that would trigger a need to file such a motion, that I would think that you would -- whatever his procedures are -- find a way to tee that up and ask him and say, we'd like to seek. Right? Because you can do that in a civil case. We want to seek a stay.

And so it's not something the District Court is unfamiliar with. And just say, we -- just to fill out the picture, we've been doing these things in Bankruptcy Court, and the bankruptcy judge said he'd certainly be happy to help but certainly recognized that in the first instance the District Court should get to decide if it wants to address the injunctive piece itself.

And there's certainly -- there's a civil injunction piece to any judgment. There's also a -- you know, there's an injunctive piece to Chapter 15. There's a couple ways to do this. So, but again, all my jurisdiction flows from up the street. And so respectful of that fact, and trying to -- I want to raise it now because I don't want to impose on the parties or Judge Broderick in -- if we

don't talk about it and then we all find ourselves in a moment of panic running around figuring out what are we doing and where are we doing it? That doesn't serve anybody's interests.

MR. HYMAN: Yeah. I think the only concern that we have, Your Honor, is just given the lack of attention that we've gotten from Judge Broderick, I don't know that we're going to get a response. We can certainly try and --

THE COURT: Well, I don't know that they -- for them to respond to at this point. The matter's briefed and he's going to get to it, and he may be in the middle of a large criminal trial, he could be doing any number of things. And so I'm unaware of any pending request, and I'm sure he'll deal with it completely appropriately. And so, you know, you may want to write all your letters and have them ready to go for whenever -- if that eventuality comes up.

You also -- again, I won't tell you how to practice, you know what you're doing. But, you know, I can imagine a circumstance where if he permits letters to chambers to say, Judge, we want to make you aware of -- and give you a refresh on where we were. We've already told you we had an original deadline of an agreement. We updated that and we told you about that too. And now we're telling you that we don't have an agreement as of October 31st. If

this happens, then the Debtor is going to seek a stay, Vale will seek to oppose it. There's a question about what appropriate forums that should all be heard. This is what we can tell you about that. And you want to do that to be a snowplow and clear the way for the eventual discussion on the merits.

And, again, I'm happy to be -- to address things as is appropriate. But, again, I'm very respectful of where my jurisdiction comes from and the fact that he has a case between these two parties on the merits and has the ability to grant a stay or not grant a stay based on his considered judgment and looking at issues. So, that's why. And so I'll let you address that as you think appropriate.

MS. SCHWEITZER: Your Honor, I appreciate you raising it ahead of time and we particularly would want to avoid a TRO type situation given we all know (indiscernible) looming. I think the one thing just to put out there, and I completely respect your view of looking toward the District Court, is that there is a lot of history here. And the original stay that we sought was a TRO pending (indiscernible) commission hearing, things like balance of the equities and uproot merits and all of that to flow into it.

And to go to this forum, I think the one thing that I would not want to be perceived is that you were

neutral or had no view on those types of positions.

THE COURT: No, I think you can safely represent -- and there's a transcript -- that if called upon to make a ruling, I would make a ruling. I'd be happy to do so. And certainly if the District Court thinks it would be of assistance for me to do so, I'd be happy to have that matter added to my calendar.

And so -- but at the same time, my -- I wouldn't say reluctance but my raising it now is to express my sort of respect for sort of the different overlapping jurisdictions and, again, where the Bankruptcy Court jurisdiction comes from. So, my thought is the appropriate -- and I am putting something in a sense on Judge Broderick's plate in the sense of then you're going to go ask Judge Broderick, presumably, how he wants to handle it. But I think -- that, I think, is appropriate in the sense of -- given all the facts and circumstances.

But, no, I'm not reluctant. I'm just trying to be respectful. And, again, I think it's in everyone's interest to know what the process looks like because it seems pretty clear based on things that have been said over the last couple of hearings, that if something happens after October 31st, there's going to be a bit of a fire drill on this particular issue and people want to know what forum, where they should go and how to handle that.

So, I think I'll trust you all on your considered professional judgment to tee that up as you think appropriate, whether it's a letter or something else, or your request for a status conference. And, again, that goes to Judge Broderick's ways of doing business and I'm not familiar with his local rules and his procedures for his chambers.

MR. ROSENTHAL: Ultimately, Your Honor, it's the joint administrators' decision on whether to file any kind of motion and how they would want to proceed. You know, we would just file an opposition and go from there to wherever it is, because, frankly, there's been a history.

THE COURT: No, no, but what I'm trying to do is I'm trying to give you the speech that I would give you if somebody filed that motion here, and then I got you all on the phone and I said, well, here's my issue. And so this is my -- I have very few powers of prophecy, but this is my prediction as to what exactly that speech would look like. And so then you would not only -- they would have that motion, but then you would all be running to the District Court to say the Bankruptcy Court says, what would you like to do? And so I'm trying to cut that off and essentially tell you where I'm going to be, because I can predict that with almost -- almost certainly at this point, just given the circumstances.

MR. ROSENTHAL: I mean, ultimately, Your Honor, if they wind up filing somewhere, that would probably put them on a clock that they haven't put themselves on so far.

THE COURT: Well, again, we'll get to it. I'm just -- you all do what you think is appropriate but I don't want anyone to be surprised if a motion gets filed here and nobody's talked to the District Court, you pretty much know exactly what I'm going to say. And so that was my reason for raising it. All right, so --

MR. ROSENTHAL: I have a proposal now, Your Honor.

THE COURT: Sure.

MR. ROSENTHAL: Because I do think that it is probably not the most exciting part of the Court's calendar to have monthly check-ins whereby things happen.

THE COURT: We do whatever walks in the door. But listen, I recognize it's also not, frankly, what you want to be spending your time on either.

MR. ROSENTHAL: And it also shouldn't be where we get those through documents briefed out to us the week after the hearing and we get maybe a (indiscernible) for the three weeks subsequent, and we kind of are wondering when's the rest coming?

So, what I would propose and I think this is pretty low-hanging fruit, Your Honor, is if the joint administrators at the end of every week give us a weekly

report on where things are in discovery. What's been done so far, what's in progress, what hasn't been started, and what their estimate is on the completion date of discovery.

So, that way we are not kept in the dark. We don't have to wait and write a letter to the Court and say we've heard nothing over the past month. So, that's kind of low-hanging fruit number one that I would suggest, just to keep the trains moving and communications open.

THE COURT: All right. Any thoughts?

MR. ROSENTHAL: I can read those again if you want that list of four.

MR. HYMAN: Your Honor, I think that you were clear in what you were ordering when you were ordering rolling production.

THE COURT: I know but things haven't happened that way.

MR. HYMAN: And I understand that.

THE COURT: So --

MR. HYMAN: And we will now have an order --

THE COURT: Well, I know, but I thought we had an order before. So, it was from the bench but it was still an order and it didn't seem to get the trick done.

In a former life, I was involved in a Freedom of Information Act case that was enormous. And while the judge was incredibly patient in the case, he also didn't want to

have dealings every day with the parties. And so status reports were a useful thing to do, so that hearings didn't trigger the exchange of information that should've otherwise been occurring.

So, I'm inclined to think that a short letter that refreshes what we've been talking about -- we essentially have three categories that are in the August 27th letter. You sort of gave a refresh today as to that. And Category 1, presumably, is done and then we're on to Categories 2 and 3. I've seen different -- I've heard different numbers, but I would think that that makes sense and is not a big... Frankly, it'll save as much attorney time as it'll cost in terms of requests for updates.

I mean, I've gotten plenty of letters in this case. And so my thought is that this is a letter that actually may save the need to write future letters. So, I'm inclined to do that. But I realize this is the first of several proposals. So, maybe -- hear them all so we can figure out where we are.

MR. ROSENTHAL: So, Proposal Number 1 was the weekly status reports that, hopefully, just opens a line of communications. The second thing was, because I don't want to have a dispute down the road that leads to, you know, requiring court intervention and be assured of well, we're far along on this process -- is there should be an exchange

with us, as happens in a lot of cases, of what are the search terms that they're using, given that Mr. Peters mentioned that they're using search terms and they're trying to figure out how to tweak the search terms to get the right number of documents to review.

I just think within a week, let's get a list of those search terms so that we can have a dialogue if there are any concerns or things that we'd like to propose before we wind up in a dispute in two months when we first find out them. So, I think that, again, is just relatively low-hanging fruit that's not uncommonly done.

THE COURT: So, that's two. What's three?

MR. ROSENTHAL: And then the third thing is, and I recognize this won't be a weekly thing given that now they're going to have go back and gather the documents from the other custodians that they had not started to gather from. But I think let's say three weeks from today, I think that weekly update should have a status support on where they are with gathering the documents from these other custodians so we don't, in two months, have to go to the Court and find out that they're nowhere yet, especially if we might be hit with a TRL in a month. So, again, just trying to anticipate things.

I think these are all pretty low-grade, low-impact requests that just, hopefully, avoids disputes that have to

come to the Court while waiting for a Court dispute to find out information.

THE COURT: All right. And did you have three or four? I thought I heard four. I'm not soliciting a fourth if you don't have a fourth currently.

MR. ROSENTHAL: Well, those are the only three. The only fourth suggestion that I have is in the event that, you know, next time we're met with new factual claims that somehow affect what the discovery obligations should be. They put in affidavits this time from Mr. Callewart. And I think next time --

THE COURT: I'm not going to micromanage future disputes. So, it's hard enough to manage present disputes. So, we'll see how it goes.

But as to the first three, those sound reasonable. After all, people in discovery, if you have -- after you get your document discoveries, you wait to take your deposition and introduce your civil case, and then you depose the person who signed the discovery responses and you say, when you looked, how did you look? Where did you look? What search terms did you look? So, that seems to be fair game for purposes of civil discovery.

And the other one seems to me just -- we're going to end up having that conversation at some point. And as part of the ongoing meet and confer obligation under the

Federal Rules of Civil Procedure that really come into play for any contested matter, which this pretty clear is -- that seems to be consistent with that. But let me hear anything from the --

MR. HYMAN: I don't think we have any objection, Your Honor. You know, we will provide weekly updates. I don't know whether a less formal email is acceptable rather than a formal letter but --

THE COURT: Yeah, I think it's exchange of information.

MR. HYMAN: We're happy to provide an update. We will -- in those weekly updates, we'll provide updates on what the joint administrators have done to request and seek and produce documents from all the other parties that we spoke to today. As it relates to search terms, we've got to speak to the client but I don't anticipate a problem. I don't know that we can get that done by tomorrow. Mr. Rosenthal mentioned the end of the week...

THE COURT: It's designed to prevent a possible redo down the road, which is a disaster for everyone.

MR. HYMAN: That's not something we've ever tried -- we're not trying to hide that from anybody. That isn't an issue.

One clarification, though, I might ask Your Honor. You made the ruling earlier related to personal email

addresses and nationality. There have been a lot of discovery that had been undertaken and redactions that had been undertaken as -- through today, which were on reliance of the last set of documents that they had agreed to do.

THE COURT: Yeah, but you decided to produce it while they had their argument pending, and that's what people did to move past it. I'll let you try to work the practicalities of that out and you'll come to me if you can't figure it out. But that's a practical problem that involves, you know, numbers, how many documents, how many redactions, can you give them what they need in a narrative description as opposed to going back and re-redacting? There's lots of ways to skin that cat, so I'm going to let you have that conversation in the first instance.

I'm not going to -- I'm not going to sit here today and say you need to go back and re-redact. That's the traditional method of doing it. But I'm going to require you to meet and confer and propose suggestions on how for anything you've produced that implicates that ruling, how you're going to sort of true up the knowledge involved so that they have what I think is -- what's appropriate and consistent with the ruling.

So, re-redaction is one way to do that. It may or may not be the exclusive way to do that, depending on how things work and what the documents are. So, I'll ask you to

meet and confer on that, and everybody reserves their rights if, in fact, the true up process is not something that people can agree upon.

MR. ROSENTHAL: Your Honor, two more hopefully very quick issues. One is, in this first batch of 211 documents that we got, there are a number of redactions not for GDPR but just simply redacted commercially sensitive and confidential information.

THE COURT: It's subject to the usual -- I mean, you know -- I don't know what to tell you. I don't have any briefing on it. You should meet and confer and, again, I don't -- I don't know what to tell you. There obviously needs to be a basis for it. If it's the business dealings of BSG, I don't know how it's not relevant, even if it needs to be subject to a protective order because it's confidential.

MR. ROSENTHAL: So, Your Honor, we resolved this I thought months ago when they were able to designate sensitive documents as AEO. And if there's not a privilege and there's not a GDPR issue, I don't know why anything is being -- it's just the confidentiality order doesn't contemplate it at all.

MR. HYMAN: Your Honor, we're happy to meet and confer with Cleary with respect to anything that's been redacted for those types of purposes.

THE COURT: I know, but this is -- the idea is that -- what are the rules of the road, right? So, if the rules of the road are flawed, then you're going to have to meet and confer about everything and then we're going to have 8 million more of these hearings. That's actually not the way the rules of the road are supposed to work.

So, if the rules of the road is that there's no appropriate basis to redact it, then there's no appropriate basis to redact it. So, that sounds like it's subject to potentially the bankruptcy rule that allows for sealing of confidential business information. But you file motions to address that and then we have discussions.

I'm not aware of any privilege, and I think we've already talked about an attorneys' eyes only procedure. So, I don't know why that wouldn't be used for that. That just seems to be a stubborn refusal to conform conduct to what we've already been talking about.

MR. HYMAN: We will go back and we'll take a look at those documents and we'll meet and confer.

THE COURT: All right. Well, you're going to go back and you're going to produce them attorneys' eyes only with that information un-redacted.

MR. ROSENTHAL: So, the last issue, Your Honor, is just to give the Court a heads up on something that I fully expect that we will have a productive conversation with

counsel for from the joint administrators. But I think last week, we got served with document requests and contention interrogatories asking for our evidentiary basis essentially for what we intend to present to the Court probably many months from now in our ultimate opposition, and for contention of interrogatories that are incredibly premature and ultimately will be revealed in our objection that we file. I've got to talk to him about timing but --

THE COURT: I'm not -- A, you're going to meet and confer. I don't have any -- listen, I prepare for hearings just the way everybody else prepares for hearings. I have numerous pages of notes and notes on notes. I'm not going to go on the fly. So, we're going to have to deal with it. You should talk to each other. But this is what happens with discovery, is -- is if there are real problems in discovery, and there have been real problems with discovery here, people are -- there's not the level of cooperation and ability to work effectively past these issues.

So, again, I'm not telling you what you have to do. I'm saying you need to meet and confer. But --

MR. ROSENTHAL: Absolutely. We plan to. I just wanted to give the Court a heads up in case we have to file a Protective Order Motion next week.

THE COURT: I know. It's just that since we've gone through a lot of things, there's only so much we can

really do without a more developed record.

MR. ROSENTHAL: I'm not expecting any guidance or any decisions. I'm just -- I don't want the Court to be surprised if we file a Protective Order Motion. But, hopefully, they recognize that contention interrogatories are premature and we agree to a date in the future.

THE COURT: I thought there's some authority about when in the process that should happen, but I don't have sort of the sort of Black's Law Dictionary kind of rule handy rattling around in my brain. But I mean, the practice is generally to have those things come later after discovery. But, again, you all will fill me in as I need to be.

So, I want to make sure I understand what's coming out of today's proceedings. So, there's going to be an order that's going to be a discovery order, and it's going to go through the rulings that were made on each of the -- I think it was four but perhaps it was five issues that were addressed starting with Mister... Starting with production of documents going to Mr. Steinmetz, going to other former and current directors and officers, as well as other companies that were identified, going to the GDP protocol, and also going to the issue -- I guess it's with Mr. Steinmetz, but maybe it's with others, about control -- possession, custody, and control and how that's interpreted.

So, those are my rulings. So, I will get that order, proposed order that should be served on the other side. If there's any comments, they need to be provided promptly. Obviously, you should share it, try to reach an agreement. I'm not hopeful that there will be an agreement but it's my ruling so I will -- I'm happy to take comments, but as it's ultimately my ruling, I will just -- I have the pen. So, that's -- so, while you may make comments, you may not necessarily hear from me as to have any further discussion because a ruling is a ruling.

As to that order and rationale, I don't think the rationale needs to really be in there. I think you can say for the reasons set forth in detail on the record of today. That way it prevents you from having to characterize things. But in terms of the practicalities, that's really what the order should be addressed. The Court rules this and this is what is required to be done.

MR. ROSENTHAL: Your Honor, in terms of timing, we'd like to wait for the transcript to (indiscernible) that way we can be sure that it conforms.

THE COURT: Yeah, that's fine. That's fine. I'm going to so order it from the bench so that we have a go-by going forward. But that's fine.

The thing that's sort of a bit of a hanging chad is the issue about attorneys' eyes only. Right? And so the

order is going to address that in some context, which is things that need to be produced, but notwithstanding the fact that they're necessary for the case, there are privacy protections which we will accord to individuals and we will treat them as attorneys' eyes only. And I think that came up in the context of personal emails.

You may want to fold in the confidential business information as well into that, that an issue was also raised, I made a ruling. It sort of didn't come up in the context of what was briefed but it came up. So, maybe that also goes into the order as to confidential business information that it's shared attorneys' eyes only and/or under seal. I'll let you work out the details of that. And that it can't be used publically without further order of the Court.

And I'm trying to figure out if there's anything else where the attorneys' eyes only protocol could be of use or that should be contained in the order.

MS. SCHWEITZER: There are only ministerial things that we'll obviously attach to the GDPR protocol itself so that you can so order and approve the protocol as part of that.

THE COURT: All right. Yeah, anything obviously that you agree to I'm 1,000 percent behind. So, that's fine. And so just to make it very clear on the record, it's

represented to me that there is a GDPR protocol. There are a couple of issues that were in dispute that were raised today that I made rulings on but that you've done the lion's share of the work on that. You have an agreement that you're going to submit as a joint protocol and that you're asking for me to approve and that I will approve. And so you can put that in the order as well.

I'm trying to make this order one stop shopping. And so if there's anything else that you, after consultation back and forth, think, jeez, this would be good to put in the order so that everybody understands the rules of the road, if you agree upon it, I will -- I'd be stunned and amazed if I didn't also think it was appropriate and useful to put in the order. Because, again, this is -- the idea is that this is supposed to go -- work forward for the parties on things.

So, I think the only thing left then that we talked about but didn't do it in specific detail is to schedule for production. I'm really using what was put on the record by the gentleman from BDO, from across the Atlantic, who works for the joint administrators as to what's going to happen. I'm adopting his schedule for production, and that's without prejudice to anybody's rights to come in and say the production's not happening fast enough or to seek relief because certainly there's a concern

about the volume of documents.

So, maybe what may be the way this works, and I'm thinking out loud here so I'm hoping not to muddle the record, but maybe what this works is what the order should talk about is the near term. There was a discussion about the second tranche and the third tranche, that the order addresses those tranches. And that for other things that there's been a proposal made as to how the schedule worked forward, everybody reserves their rights and that we will -- the parties will continue to meet and confer about things beyond those immediate tranches that were represented on the record. Maybe that's the way to do it.

MS. SCHWEITZER: We'll go back and look at the record. I thought he had actually given expectations to the outside date for total completion so that if we were in agreement with that outside date, then we can --

THE COURT: Yeah, so take a look at it, at what exactly he said, but that really is the go-by. Essentially, if you all can live with it, I'm happy to adopt it as, you know, basically the way I thought we sort of adopted the earlier discussion about timeframe. So, that's -- but I'll let you look at the transcript of what he said, but that really is the point of the realm in terms of what we're going to do in terms of scheduling. So --

MS. SCHWEITZER: And a procedural question. How

would you like us -- whether we agree or disagree, would you like us to file forms of order and letters on the docket or to email to you, or what procedure what you --

THE COURT: I don't think it needs to be sort of notice to all. I mean, I'm happy if you wanted to do that. I don't know that it's necessary. Because while this would be relevant for other folks, it's really a discovery dispute between two parties so I think it's appropriate to just, if you want to submit the letter -- you want to submit the order, send it to email and say, here's what we've come up with.

And then if there is going to be an objection, I would say that needs to be done within 48 hours, if you can live with that timeframe, just because I'd like to get this order entered before fall turns to winter. So -- and, again, I know I'm so ordering it but I know that doesn't give the level of clarity that is useful for attorneys and for the Court, frankly, too. So, I would say that that's where we'd end up.

So, I think you can submit just essentially a letter with the proposed order, which you'll also attach to the GDR protocol, and that should do it.

MS. SCHWEITZER: That's fine. All right, do I dare ask about another hearing date?

MR. ROSENTHAL: Yeah, that's what I was going to

ask -- when you'd like to see us again. Or not like to see us.

THE COURT: I don't know that I would phrase it exactly like that, with all due respect.

MS. SCHWEITZER: When shall we return?

THE COURT: So, give me one minute here. So, what are we thinking in terms of an appropriate date? How far out?

MR. HYMAN: A month from now?

THE COURT: That's what I was thinking. Does that work for everybody?

MS. SCHWEITZER: Yes.

THE COURT: All right, so here's what I asked you to do. I, unfortunately, don't have my calendar and program open. So, rather than wait as the Windows icon spins, why don't I ask you to go to talk to Ms. Ebanks and get a date about 30 days out, and since you're both here -- you're all here, that way you can get a day that works for all your schedules.

MS. SCHWEITZER: Great.

THE COURT: And if -- because it's always good to be optimistic in life -- if everything is going so swimmingly that we don't need to talk in a month, you'll call and say we don't need to talk in a month and you'll pick another date, if everybody agrees that that's the way

to go. And so you'll let me know. And if for some reason there is something that is of a more fire drill nature like, hypothetically, something issued by the District Court, and there's sort of a need to have a conversation quickly -- I'm trying to avoid that by my comments earlier today -- you'd just get everybody on the phone and work out with Ms. Ebanks a date and time for us to talk.

As you know from prior -- or you may know from prior things, I usually deal with those kinds of things within 24 hours and 36 if we're in the middle of something crazy here in terms of getting you a time to chat.

MS. SCHWEITZER: Thank you, Your Honor.

THE COURT: All right.

MS. SCHWEITZER: And thank you for your time today.

MR. HYMAN: Your Honor, we would just like an opportunity to talk to our clients before trying to schedule the date for a month out. So, if --

THE COURT: Yeah, that's fine. If you want to do that, that's fine. Why don't you do that? What you might do, though, I would suggest is maybe get a couple of possible dates from Ms. Ebanks, and then that way you can circulate them to folks and then you can pick among them and figure out which one works.

MR. HYMAN: That sounds good. Thank you, Your

Honor.

THE COURT: All right.

MS. SCHWEITZER: Thank you, Your Honor.

THE COURT: All right, thank you very much.

(Whereupon these proceedings were concluded at 3:47 PM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Landanski Hyde

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